THE

MADRAS REVENUE REGISTER.

No. 3.] MADRAS:—TUESDAY, MARCH 15, 1870. [Vol. IV.

THE COLLECTOR OF A DISTRICT.
II.

To RESUME (after so unexpectedly long an interval) our consideration of a Collector and his duties, we now proceed, after having* imperfectly sketched out our idea of a good government for the provinces, to notice, as briefly as may be, the impossible character of a Collector's work as at present constituted, so as to justify in that way also the proposed change of system. In the opinion of many very experienced observers, there is scarcely anything from which the country suffers so much just now, as the unlimited right of appeal. This is a right which, of course, can scarcely be too freely conferred on any people; but its exercise would be rendered far more convenient, if a Collector's (or, as we prefer to call him, a Commissioner's) decisions were final in cases where the Board's are final now; and were it so, we venture to think that the Collector's decisions would be more likely to be in accordance with justice and more appreciated by the people generally. At present† every order he passes, no matter how trivial the subject may be, is appealable, either to the Civil or Sessions Judge, or else to the Board of Revenue; and the consequences appear to us to be exceedingly disastrous. While an appellate authority remains, the Hindu (the Tamulian at any rate) will appeal; and the uncertainty of all things legal is a fact so clearly established now, that no one ever thinks his chance quite desperate, and would almost think himself disgraced if he did not pursue his case to the uttermost limits of his purse. Litigation to the Hindu, it has often been observed, is what politics were to the ancient Greek; and the "last case in Court" forms the favourite topic of discussion under every "Village Tree." If the appellate authority were more regularly constituted, it would not perhaps be so injurious to the influence of a Collector; but when it is known that his careful local enquiries are liable to be set aside by the arbitrary dicta of a sort of Star Chamber in Madras, promulgated by an almost irresponsible Sub-Secretary, the consequences cannot fail to be detrimental to the interests of good government. As if to add to the confusion so created, and to lower his authority still more, a number of *Departments* have been introduced into every district, which correspond, on all manner of topics most intimately affecting the prosperity and *government* of the district, with authorities in Madras and elsewhere, and which studiously, nay, even ostentatiously, ignore the Collector's wishes, and openly express contempt for his opinions. This, in our opinion, is utterly ruinous to anything like a proper

* *Vide Revenue Register* for April 1869.

† Except a *very* few passed by him as a *Magistrate*.

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system of government, and involves, moreover, considerable waste of time; for a Collector, armed with the authority the Board now possesses, could easily control them all, in a far more efficient manner than any Board at Madras, however able, can hope to do, provided, of course, that properly qualified men are selected for Collectors. No Department *in* the district should correspond directly with any authority *outside* of it; neither Survey nor Settlement; Forest Conservancy, nor Railway; Police, nor Jail; Engineering, nor Registration; nor any other whatever. Whatever the Collector considers he can dispose of, he should answer finally; and whatever he thinks proper he should refer to Government *direct.* We shall perhaps find occasion to say something hereafter as to what this Government should consist of. With all these Departments thus strictly subordinated to the head of the district, much of the business of Government might be carried on demi-officially, and by personal intercourse; and, in a Government of strangers like our's, it is quite impossible to over-estimate the importance of this demi-official style of doing business. The system has never been fairly tried. It consists now of a demi-official from the departmental subordinate in the district to his chief in Madras, a second from him to the Collector, a third back again to the chief in Madras, a fourth conveys the result to the patient subordinate; and so at last the answer, which the Collector on the spot would have given in two minutes, is filtered and diluted, and valuable time is wasted till it is of no use when it comes, and the whole case is almost forgotten in the lapse of time. A strong and final executive on the spot, or within a day's post or a morning's ride, would increase the activity and efficiency of every department fifty per cent. How can a Collector feel that personal interest, in his Police for instance, which he ought to feel and *shew,* when his suggestions are either resented as interference (!), or rejected with quiet contempt? It would be worth while for Government to call for a return, shewing the number of inspections of Police stations that have been made by *District* Magistrates since the introduction of the new Police. Such a return would shew clearly how much real interest District Magistrates have taken in the improvement of the police, and how far they have honestly endeavoured to train that agency as their *only* instrument for the suppression and detection of crime. Then, if it should appear that they have never really given their hearty co-operation in the work of organizing the new Police, Government might well consider *why* they have so generally neglected their duty. Did they enter upon such an enquiry, we think they would find that the present state of things was entirely owing to the jealousy born of departmental divisions. We have heard so much of this jealousy, and of the ruin it brings upon district administration, that we (in our model Government) would not hesitate to remove, or even suspend a subordinate for the slightest act of insubordination towards a *Commissioner* such as we have described; but what prospect is there of any such wholesome vigour, when our Commissioner is only a Collector, the head of a "Department" very little, if at all, more respected by those in authority than that of the Police, or the Revenue Survey?

Of course, we are very far from implying that *all,* or even the majority of our present Collectors, have actually allowed their high office to fall into contempt; but we are sure that the direct tendency of the present system is to bring about that result, and we believe that most Collectors would admit the truth of this statement. The amount of work involved in a Collector's office, under the present system, in connection with these various departments—great part of which might, we believe, be dis

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posed of demi-officially under other arrangements—may be partly guessed at by looking only at the official correspondence that passes between the Collector and these several Departments in the course of a single official year. It will be found, we believe, to exceed five hundred letters in an ordinary district, or an average of (say) two letters for every working day.

We are prepared to pursue our subject, as opportunity may present itself, in future issues.

MIRASSI RIGHT.

We have before us a small pamphlet by Mr. Ragoonath Row, formerly Deputy Collector of Tanjore, and now Deputy Collector of Madras. The pamphlet is in the form of a letter addressed to Sir Charles Trevelyan when Governor of Madras. It bears the date of 1860, and treats of the rights of the mirassidars of Tanjore. It is somewhat late to review a brochure ten years old; but we offer no excuse for so doing since the subject is one of general interest to the country, and is one that remains unsettled up to the present day, and will, therefore, without doubt be of interest to our readers.

The pamphlet is a brief resumé of the different reports of Collectors and orders of Government which are favourable to the claims of the mirassidars, on whose side the sympathies of the author are evidently enlisted, since he fails to take notice of any of the numerous arguments which have been urged against those claims. The term "mirassidar" is one, the derivation and exact meaning of which it is somewhat difficult to ascertain. To go back one step, the word, of course, means a person owning, or in possession of, a mirassi. The word "mirassi" is, however, a vague one. It is frequently used as synonymous with the word "maniyam," and in the southern districts of the Madras Presidency the word is thus generally understood. As our readers are probably aware, the word "maniyam" is used with reference to a grant of land given as a reward for services rendered by certain of the villagers. Thus the maniyam land of a Moonsiff or Monigar (literally Mániyakáran) is the emolument that officer receives for the official duty he performs. Supposing, then, that the inhabitants of the southern districts of India are correct in using the word "mirassi land" as an equivalent for maniyam land, we are led to infer that the rights and privileges which the possessor of the maniyam may enjoy arise, not from the individual, but from the land which is attached to the office the individual fills. It is not difficult, if this analogy is allowed, to trace how the word mirassidar has in course of time been used, not only in reference to a village servant, but also in reference to a village cultivator, since the land the ryot cultivates is granted to him in consideration of his payment of a rent to Government. The analogy between the village servant and the ordinary ryot is thus perfect: the *quid pro quo* given by the ryot is money; that given by the village servant are his services; the reward received by both is land.

The claims of mirassidars are of two kinds—firstly, they claim that, as long as they pay a fixed rent settled by Government, they cannot be ejected from the land *they occupy or cultivate,* nor can the rent thereof be raised at option. This claim has been conceded to be correct, not only as regards those persons who style themselves mirassidars, but as regards all cultivators whatsoever. Occupation when accompanied by regular payment is left undisturbed, and the rate of rent remains unchanged, except where a general system of assessment is introduced. Writers on the subject now under discussion generally preface their

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remarks, by entering with considerable detail into the question, whether the proprietary right in the land is vested in the Government, or in the mirassidar. This question, however, appears to us immaterial; we do not propose to enter into an argument as to whether the fact of having paid an immemorial rent is a tacit admission of the superior right of Government to the land which pays, or whether the rent is merely to be considered as a tax levied by Government on its subjects in the same way as it levies a percentage upon incomes. Government is prepared to allow the occupation of all cultivators (whether they are styled mirassidars, ryots, or anything else) to remain undisturbed as long as they pay rent for the land they occupy. The second claim of the mirassidars goes, however, a step further. They urge that, by immemorial custom, the fact of a mirassidar paying rent for cultivated land gives him a right to the uncultivated lands attached to the village, in proportion to the amount of land he cultivates. These uncultivated lands are of two descriptions—Poramboke lands, or lands which cannot be cultivated, such as tank-beds, channels, river-beds, &c., and Anardy Tarass, or land which is not, nor has ever been, cultivated. Of course, the value of land of this latter description varies considerably according to the district. In the dry districts, where the proportion of cultivated land to waste may be as high or higher than 1 to 5, this right is scarcely likely to affect Government interests; but when we turn to wet districts like Tanjore, some parts of Trichinopoly, South Arcot, and Madras, the matter is a very different one. In those districts, every inch of ground is of value, whether cultivated by wet or by dry grains, or whether waste. As from year to year the supply of water increases, so does the amount of land capable of being brought under wet cultivation increase; and what land is left waste becomes yearly of increased value to the respective villages for the purposes of grazing cattle, cutting firewood, &c. Now, if the right of the village cultivators or mirassidars to the enjoyment of these waste lands free of tax is admitted, it is clear that the Government is a loser to that extent of revenue which might otherwise be derived from these lands if brought under cultivation by other persons. It is argued, and with some show of reason, that if no land is left available for grazing or other purposes as mentioned above, the ryots would be unable to provide provender for their cattle, or to obtain those common necessities of life which become requisite to enable them to cultivate the lands for which they pay rent. On a closer examination of this argument, however, it will appear to be unreasonable. Wet cultivation in these districts has increased. Each acre of land brought under cultivation pays rent, (unless specially exempted as inam, or as maniyam); the very fact, therefore, of previous extension of cultivation gives an irresistible precedent for future extension. Again, if we glance at farmers' holdings in England or in Europe, we shall find that the farmer is not dependent upon commons for the grazing of his cattle, or the supply of his fuel; his land, for which he pays rent, is divided into arable, pasture, or plantations. He has *himself* to provide provender for his cattle, or trees to supply him with firewood; in other words, he has to pay rent for land which he uses merely in order to supply himself with the necessaries requisite for the cultivation of his whole farm. Bearing this in mind, we are of opinion that it is evident that, as far as regards the *justice* of the claim, the ryot or the mirassidar is not entitled to the free use of waste land, and that, in the event of Government choosing to allow all waste lands to be cultivated, he cannot complain if he has himself to provide the land for the purposes required. The question, however, then arises, what rent is he to pay for

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it? Is waste land to be given to him now on an assessment fixed for dry crops, and so secure to him the perpetual enjoyment of that land on easy terms, even supposing that in some future time the land thus given over might be converted into wet land owing to improved irrigation schemes and a better supply of water? or supposing the land to be at some future time capable of improvement, and supposing other cultivators to be willing to improve the land and pay an increased rent, is Government to be a loser of the amount of such increased rent because it has given the land on easy terms? These questions are of great importance, and the mirassidar claimants have in reality this point at issue. The pamphlet before us is written with that object in view, since at page 15 we find the author making the following proposition:—

"1*st.*—To clearly ascertain what portion "of any waste in a village might, without "inconvenience to the villagers, be brought "under cultivation.

"2*nd.*—To find out the Tarum assessment "thereof, or fix one on it from that of the "neighbouring fields.

"3*rd.*—To add this to the jummahbundy "amount, and make the sum thus obtained "the maximum amount of tax that the "Government would always demand of the "ryots, allowing at the same time, in "particular cases, such deduction from "the amount so added as the well-being "of the ryots may appear absolutely to "demand.

"4*th.*—To apportion this settled amount "among the several pungoos, or shares of "the village, and thus determine what each "ryot will have to pay.

"5*th.*—To give the ryots distinctly to "understand, by proclamation, that no remis-"sion will be granted them except in seasons "of very extraordinary distress, but assuring "them at the same time that they might "enjoy untaxed the benefit of any improve-"ment they may effect in their holdings, "whether it be the conversion of one crop "land into two crop, of dry into wet, or the "like, except where such improvement is "directly owing to important hydraulic "works executed by the Government, in "which case an additional water-tax might "be levied."

The above rules, which we have given *verbatim*, were proposed by the author as the basis on which to effect a new settlement of the irrigated portion of the Tanjore District. As regards the high lands of that zillah which are unaffected by the irrigation from the Cauvery and Coleroon, he proposes rules slightly modified, but in reality on the same principle, namely, fixing a permanent revenue to be levied on the whole land as it exists at present. Mr. Ragoonath Row appears to have been sensible that these rules might be objected to, for he says, "It may perhaps be objected "that the last-mentioned rule will deprive "the Government of any legitimate increase "of revenue. But I believe that the loss "the Government may thereby sustain will "be more than counterbalanced by the "saving that would result from the removal "of that host of officers, who are now paid "to watch cultivation, the encroachment of "wet and dry land, of two crop on one crop, "&c.; and, even supposing this not to be "the case, what is the sacrifice of revenue "that the proposition involves, but as the "dust in the balance compared with the "numerous and important advantages that "will flow from it—the improvement in the "condition of the land which would add to "the stability of the revenue, the removal "of every baneful interference with the "ryots, the creation of a respectable and "independent body of landlords—the great

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"supporters of Government—and the deve-
"lopment of the resources of the country
"resulting from the vigorous stimulus
"which would thus be administered."

The above paragraph (which is a fair specimen of Mr. Ragoonath Row's style and language, which is far above the average of that used by native gentlemen of even high education), shows clearly that the advantages to the cultivators would be great, whereas as regards the Government the increase of revenue would not be very material. As regards the "removal of the host of officers" which would be the result if these rules were carried into effect, Mr. Ragoonath Row appears to forget that the officers are, as a general rule, paid in land, and it is questionable whether Government would have the legal right to deprive them of that land, or to make them pay rent for it, simply because the Revenue authorities wished to inaugurate a system less inconvenient than that hitherto in practice. There can be no doubt that to frame a settlement on this basis would be tacitly to admit the right of the cultivators to the lands they lay claim to as they exist at present. In the present article we have confined ourselves merely to the justice of the claim; in a future issue we propose to discuss the legal right of the claim, on what grounds it is founded, and whether those grounds are tenable.

We will leave our readers, therefore, for the present with the broad statement that there is a large quantity of land in the different districts above named which is at the present moment waste, and, therefore, profitless to Government, which land there are many who would willingly undertake to cultivate, and which is capable of wet cultivation owing to the present supply of Government water, but which is debarred from yielding a revenue to Government owing to the existence of the claims of the mirassidars.

CORRESPONDENCE.

THE RENT RECOVERY ACT.

To the Editor of the Madras Revenue Register.

SIR,

There seems in India, as in England, no possibility of drafting an Act through which a coach-and-four may not be driven. Let us look at Sections 4 and 7 in their connection with Section 6.

Section 6 is as follows, "Puttahs and "muchilkas *shall* be regularly signed and regis- "tered by the curnum of the village in which "the lands engaged for are situated." Here the language seems sufficiently definite, and one would scarcely imagine that the real interpretation is that it is merely directory, and not compulsory, as to the signature of, and registration by, the curnum. But at page 244, Vol. IV, Part III of the Madras High Court Reports, the whole matter is "thoroughly explained" in the following

"JUDGMENT*:—In this case we understand "the fact to be that the muchilka sued on was "given in exchange for a puttah, as required by "Sections 3 and 4 of Madras Act VIII of 1865. "If that be so, we are of opinion that the suit "is maintainable under Section 7 of the Act. "We think that Section 6 was intended to "impose on curnums the duty of signing and "registering, but no more. Had it been "intended to be a condition of the right to sue, "it would have been expressly so provided in "Section 7, and a provision made for compelling "registration."

Now, what is the language of Section 7? To avoid reference, so much of it is set out here as is necessary for present purposes:—"No suit "brought, and no legal proceedings taken, to "enforce the terms of a tenancy shall be sus- "tainable unless puttahs and muchilkas have "been exchanged as aforesaid, or unless it be "proved that the party attempting to enforce "the contract had tendered *such* a puttah or "muchilka as the other party was bound to "accept, or unless both parties shall have "agreed to dispense with puttahs and muchil- "kas." What does "such" mean? It does not mean, unless the puttah or muchilka shall be precisely that in all respects which it is required to be by Sections 4 and 6, that is, by Section 4, "the puttah shall contain the names of the contracting parties," &c.; and "the muchilka shall, at the option of the land-holders, be a counterpart of the puttah, or a simple engagement to hold according to the terms of the latter," and under Section 6, whether puttah or muchilka "shall be regularly

* Scotland, C. J., and Collett, J.

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signed and registered by the curnum of the village in which the lands engaged for are situated. Can it otherwise be called "such a puttah or muchilka as the other party was bound to accept?"

I am, Sir,
Your's faithfully,
A TENANT.

It seems to us that Section 6 comes into play only after exchange of puttah and muchilka, that is, after the transaction between the parties is complete by exchange. It is then the duty of the curnum begins; but the bare tender of a puttah or muchilka (drawn up according to Section 4) by one to the other is sufficient to give a cause of action.—ED. *R. R.*

HIGH COURT—MADRAS.

[APPELLATE SIDE.]

INNES AND COLLETT, J. J.

Decree for land—direction for issue of puttah—

Where a decree, making over certain lands to the plaintiff, contained also a direction that "the puttah should issue in his name"—

HELD *that there was no impropriety in adding a declaration to the decree of the right of the plaintiff to have a puttah in his name, though the terms of that direction were inaccurate.*

Regular Appeal No. 56 *of* 1869.

Narasimachariar *v.* Saravana Pillay and five others.

Plaintiff sued the defendants for recovery of 41¼ cawnies of land in the village of Mangadu under deeds of sale severally executed by them. The first, second, and third defendants pleaded "champerty and maintenance," but that plea was disallowed by the Court. The fourth and fifth defendants denied the plaintiff's claim to all the lands in dispute except 19 cawnies, which they admitted did not belong to them. Subsequently plaintiff relinquished his claim to all the lands except the 19 cawnies. The Civil Judge, Mr. E. B. Foord, decreed that extent of land to the plaintiff, with a direction that "the puttah for that land should be issued in plaintiff's name." The fourth and fifth defendants appealed to the High Court, and contended that the plaintiff was not entitled to the transfer of puttah in his name; that the persons from whom he purchased were not mirassidars or puttahdars; that the plaintiff had only right of occupancy, and was not entitled to the privileges of a puttah holder; and that it had been repeatedly held that there could be no suit for a mere transfer in a revenue register.

Sreenavassa Charriar for the appellants, and Rangiah Naidu for the respondents. The High Court delivered the following

Judgment:— 7th January 1870.

In this case the fourth and fifth defendants are not in a position to deny that the absolute ownership of the 19 cawnies of land in the possession of the first and third defendants has become vested in the plaintiff. They simply contend that they are entitled to retain the puttah for the land in their names. We see no reason why such an ordinary consequence of absolute ownership as the right to a puttah should not follow the property in this case; and as the defendants chose to contest the question, there was no impropriety in adding to the decree a declaration of the right of the plaintiff to have a puttah in his name, though the terms used that "the puttah should issue in plaintiff's name" was, strictly speaking, inaccurate. With this modification we confirm the decree of the Court below with costs.

BITTLESTON AND INNES, J. J.

Right to water—Waiver of part of claim—

On A's suit against B for damages caused by obstructing a channel from which A received water, which had been dismissed on the statute of limitation, being remanded for trial on its merits, the lower Courts found that the Collector in 1827 *had directed that the channel should be re-opened and the obstructions removed, and that A had been in possession ever since and was entitled to the flow of water; and, although A's pleader waived his right to the enforcement of the Collector's order of* 1827, *they directed the enforcement of such order to prevent future litigation—*

HELD *that such part of his claim as the plaintiff had abandoned ought not to be awarded to him, and that the decrees of the lower Court ought, therefore, to be modified to that extent.*

S. A. 179 *of* 1869.

Sri Sri Sri Saradi Charana Samantaraya Garu, Zemindar of Jarada, *v.* Sri Sri Sri Viswambhararajendra Deo Garu, Zemindar of Chikoti.

THIS was a suit to recover Rupees 800 as damages for the loss of crops in 1862, 1863, and 1864, occasioned by the defendant having obstructed a channel by which the lands of the village of Kambarigam, belonging to the plaintiff, had hitherto been watered. The suit was originally decided by the District Munsiff of Itchapur on the 8th March 1865. He gave a decree for plaintiff for the whole amount of loss claimed, and ordered the channel to be re-dug at the expense of the parties in proportionate shares, and the calingulah, or overflow escape for the water, of a small hill tank to be re-built with brick and mortar. This decree was reversed by the Civil Judge on appeal, principally on the ground that the claim for damages was barred by the law of limitation. Upon special appeal the High Court reversed the Civil Judge's decision under Section 351, Civil Procedure Code, and remanded the case to the Court of first instance upon the following issues—(1), had plaintiff a right to the flow

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of water from the stream from which he claimed to receive it; (2), was he in possession and enjoyment of such right at any date within the twelve years immediately preceding the date of the suit; (3), what was the loss sustained by plaintiff by the wrongful act of defendant in preventing the flow of water to plaintiff's lands in 1862-3-4, (the right to recover for the latter year depending upon whether or not the special damage claimed had accrued at the time of the bringing of the suit, 2nd December 1864). The District Munsiff found for the plaintiff on all these issues, and passed a decree in every way identical with the one originally passed by the District Munsiff of Itchapur, and ordered the channel to be dug and the calingulah to be built. The defendants appealed to the Civil Court of Berhampore on the grounds that, from the documents marked E. and F. (copies of the Courts' decisions), it did not appear that the Courts had held that the plaintiff had a right to the flow of water in the channel in dispute; that the Collector's orders and the letter from the Sub-Magistrate of Itchapur quoted were not proof that plaintiff had had continuous possession and enjoyment during the twelve years preceding the institution of the suit; that his (defendant's) witnesses proved that plaintiff had no right to take water from the Bavanipuram Channel, and that they had never done it; that, as the first and second issues were not really proved, it was unnecessary to touch upon the third; still that had not been proved; that the High Court, being unable, through insufficiency of evidence, to decide the appeal under Section 353, had remanded it under Section 351; and that the lower Court was, therefore, wrong in accepting as proof the documents and original judgments contained in the original record which the High Court considered insufficient. They further contended that as the plaint only stated that the defendant had caused an obstruction to the flow of water to plaintiff's lands, the order now given with respect to the digging of the channel and raising of the dam was extra to the matter sued for. The Civil Judge of Berhampore, J. H. Master, Esq., was of opinion that the original judgment of the District Munsiff of Itchapur contained a clear statement of the facts of the case, and of his decision thereon after a personal inspection of the spot. In this judgment the District Munsiff had come to the conclusion that the purport of the decision of the Collector, Mr. Byard, (in his third paragraph, dated 27th November 1827), was not that a channel should be newly dug, but that one already in existence should be repaired and the obstructions removed. The Munsiff also stated that, with the exception of losing the course through two fields which belonged to the defendant, he could trace the channel a long distance, thus disproving the defendant's statement that there was no water-course in existence.

The present District Munsiff, after taking a few more depositions and receiving one or two documents, passed judgment precisely to the same effect. The Civil Judge himself fully concurred in these decisions. He further was of opinion that with regard to the first issue the copies of decrees of the late Adawlut and Provincial Courts, produced to prove plaintiff's right to the flow of water, completely established that right; for, although the action was one for damages, yet the decree expressly provided that the channel was to be continued as before. This was in 1835. From a perusal of all the documentary evidence and from the evidence adduced, no other inference could have been drawn but that the plaintiff had a right to the flow of water; that he and his ancestors had been in possession and enjoyment of such right up to 1862. The loss occasioned since then had been fully proved, and it had also been shown that the loss connected with 1864 occurred previous to the institution of the suit. With reference to the ground of appeal that no portion of the original record should have been made use of as evidence, because the High Court had not been able to form a judgment on it and had been obliged to remand it, the Civil Judge held that the cause of the remand was the incorrectness of the judgment of the lower Appellate Court which had disposed of the case as barred; the High Court had not entered at all into the merits of the case as laid down by the original judgment of the District Munsiff of Itchapur. As to the second issue, the argument as to the insufficiency of the firmanas of Messrs. Bannerman and Forbes were not worth much, as there was plenty of evidence without those documents. With regard to the order to remove the obstruction, &c., though at first sight it appeared extra to the plaint, and though the plaintiff's pleader had verbally announced that the plaintiff would not ask the Court to enforce Mr. Byard's decision, yet the Judge was of opinion that not to give the order would be only to open a source of further litigation; he, therefore, upheld the decision of the lower Court, and dismissed the appeal with all costs. From this the defendant appealed to the High Court. Sloan for the Appellant; Miller for the Respondent. The High Court delivered the following

Judgment:—9th February 1870.

In this case we think that that part of the decree of the Civil Judge cannot be upheld in which he confirms the decree of the District Munsiff directing the enforcement of the order of Mr. Byard made in 1827. It appears to be unquestionable that in the first appeal trial, the plaintiff, through his vakil, waived the claim he originally made to have that order enforced; and whether, in the absence of this waiver, we could, or not, have come to the conclusion that that part of the decree would have been properly made, it seems clear that

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such part of his claim as the plaintiff has abandoned ought not to be awarded to him. We shall direct, therefore, that the decree be modified to this extent. The plaintiff ought to have the costs of the special appeal first made, and the defendant the costs of the present special appeal.

HIGH COURT—CALCUTTA.

MACPHERSON AND JACKSON, E., J. J.

Ganga Marayan Das and others (defendants) *v.* Saroda Mohan Roy Chowdhry (plaintiff.)*

Suit for rent—Co-sharers—Enhancement—Proof of receipts.

A landlord, one of several co-sharers, cannot sue a tenant of the joint estate for his separate share of the rent, unless the tenant has paid or agreed to pay to him separately.

In decreeing enhanced rent it is necessary to specify distinctly on which of the grounds stated in the plaint enhancement is allowed.

To prove receipts it is not necessary to produce the writer of them. The ryot can prove his own receipts.

Baboos *Mahendra Lal Shome* and *Kedar Nath Chatterjee* for appellants.

Baboos *Srinath Das* and *Ramesh Chandra Mitter* for respondent.

The facts are sufficiently set out in the judgment of

MACPHERSON, J.—I think that this case ought to be remanded in order that it may be tried *de novo* by the Judge whose present decision is in various respects defective. The plaintiff sues as one of several joint proprietors to recover a certain proportion of rent which he says is payable by the defendants in respect of lands occupied by them. The co-sharers are not parties to the suit. The defendants have throughout pleaded that, as the plaintiff holds this property jointly with others, the present suit is bad in the absence of the co-sharers. The first Court held that the proprietors were in the habit of making collections separately, and, therefore, that the suit would lie.

The Judge upon this part of the case simply says:—" There is no doubt about the extent of the " plaintiff's interests, and there are several pre- " cedents to the effect that a shareholder can sue " to enhance the rent if his share is definitely " known and his title is not contested." The law, as laid down by the Judge here, is correct only to a certain extent. If the plaintiff can prove that the defendants have heretofore recognized him as being the proprietor of a particular share of the property and have paid to him separately a certain proportion of the rent, then no doubt the suit will lie against them without the other joint proprietors being made parties. But, unless the plaintiff either proves that the defendants have paid their rent to him separately or proves an express agreement on their part to pay to him separately, the suit will not lie in the absence of the other shareholders. The Judge must consider carefully what the facts are with reference to this part of the case.

The next point on which the judgment of the lower Appellate Court is defective is as to the reasons for which, in the Court's opinion, the defendants are liable to pay rent at an enhanced rate for the year 1274. The defendants denying their liability to have their rents enhanced, the judgment should say distinctly on which of the grounds on which enhancement is claimed by the plaintiff the enhancement is decreed. It is not enough for the lower Court to find generally that the plaintiff is entitled to rent at an enhanced rate; there must be a distinct finding as to the ground on which he is so entitled.

With reference to the contention of the defendants that they have a right of occupancy, it appears to me that the Judge has quite misconceived the nature of the evidence necessary to be adduced by the defendants in order to prove certain *dakhilas* and other documents put in by them. The Judge says:—" I am obliged to concur with the Deputy " Collector that the receipts filed are not properly " proved by the best evidence, *i. e.*, that of the " writers, when alive in all cases." The Judge apparently labours under the impression that when the writer of a document is alive the document cannot be proved save by the evidence of that writer; at any rate, that it is the duty of the person who propounds the document to bring the writer before the Court. But there may be many people who can prove a document quite as well as the writer of it; and a person who wishes to put a document in evidence is under no sort of obligation to call the writer as his witness if he has any other sufficient means of proving what he wants.

In the case of a receipt granted to a ryot, whether the writer of the receipt be or be not alive or producible, it would be *primâ facie* quite sufficient if the ryot were to depose that he himself, on paying his rent, had received the receipt from the zemindar's goomastah to whom he paid his rent, and that the goomastah gave it to him, saying that it was a receipt for the rent so paid. So also it would be sufficient if he swore he saw the zemindar or goomastah sign the receipt, or if he were to produce a witness (by which term I do not mean one whose name appears in the document as attesting its execution) who deposed that the receipt was written and signed by the goomastah in his presence. The evidence of the writer of a paper is not necessarily any better evidence than would be that of other persons who can of their own knowledge speak to such facts as will satisfy the Court that the document is really what it purports to be.

The lower Appellate Court does not seem to have wholly discredited the documents produced by the defendants. On the contrary, the Judge says:— " I do not entirely concur with the Deputy Collec- " tor in his remarks on the *dakhilas* * * *; " they are simply not proved." It appears to me, therefore, that the Court must, in re-trying the case, be very careful to see that it does not reject, as being unsupported by evidence, documents which are, in fact, supported by good legal evidence: of the weight to be attached to the evidence before him, the Judge will, of course, form his own opinion.

* Special Appeal, No. 102, of 1869, from a decree of the Officiating Judge of Rungpore, dated the 18th November 1868, affirming a decree of the Deputy Collector of that district, dated the 29th July 1868.

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The judgment of the Judge is reversed and the case is remanded to him, in order that it may be tried and decided anew with reference to the above remarks.

The appellants will get their costs of this appeal.

JACKSON, J.—I concur in the remarks of Mr. Justice Macpherson, and in remanding the case for a fresh decision.—*8th June* 1869.—*Bengal Law Reports, Vol. III, Part XV.*

BAYLEY AND HOBHOUSE, J. J.

Lasmani Debia and others (defendants) *v.* Mahommed Hafezulla, (plaintiff.)*

Suit to recover share of malikana—Jurisdiction of Small Cause Court—Act XXIII of 1861, *Section* 27—*Special Appeal.*

A suit to recover share of malikana, which the defendant had realized from the Collector, is a suit for recovery of a sum of money which has been taken away by the defendants to the damage of the plaintiff, and is, therefore, cognizable by the Small Cause Court; and under Section 27, *Act XXIII of* 1861, *no special appeal lies from a judgment passed in appeal in such a suit.*

Baboo *Nalit Chandra Sen* for appellants.

Baboo *Mahini Mohan Roy* for respondent.

HOBHOUSE, J.—The nature of this suit is accurately described in the first paragraph of the first Court's judgment. It is there said that "the "plaintiff has brought this action for the recovery "of his share of malikana of Chur Deskandi formed "by the re-formation of his mehals, amounting to "Rupees 62 and Annas 3 out of the entire Rupees "311 and Annas 2 which the principal defendants, "Nos. 2 to 8, have realized from the Collector of "Mymensing (defendant No. 1), on the allegation "that the said principal defendants have taken the "whole amount without giving his share."

From this statement of the plaint it appears that the claim was to recover a sum of money to the extent of Rupees 62 on the allegation that the defendants had deprived the plaintiff of that money by keeping it themselves.

Both the Courts below have given the plaintiff a decree, and the defendants now appear as the special appellants before us. But a preliminary objection is taken by the pleader for the plaintiff to the effect that under the provisions of Section 27, Act XXIII of 1861, no special appeal will lie in this case. He urges that the suit was of a nature cognizable by a Court of Small Causes; that it was a suit for damages, and that, as is admitted, the amount of the money in suit was below Rupees 500. It is contended by the pleader for the special appellant that the matter in suit was not properly for damages; that it was a question of malikana, or money derived from a proprietary interest in land. But it seems to us on the face of the suit that it was a suit for damages. Whatever was the original source from which the money was derived, still it was a sum of money which was taken by the defendants to the injury of the plaintiff, and it, therefore, represented that which the plaintiff had been endamaged by the defendants. Clearly, therefore, the matter in dispute was a matter of damages. It is next, however, contended by the pleader for the appellant that the suit was not cognizable by a Court of Small Causes; that a question of right was raised and determined in that suit; and that such a question is not one cognizable by a Court of Small Causes. We think, however, on a perusal of the plaint itself and on the understanding between the parties as represented by the statements on record as to the point at issue, that no question of right was determined, and that, though such a question was raised, yet it was simply raised incidentally in order to the determination of the question of damages. The plaintiff did not sue to have his right established to a particular share in the land from which malikana was derived. He simply asserted that share, and then claimed to recover the money due in reference to that share. And the case seems to us to be clearly of the nature contemplated by the decision of the Full Bench, on which the pleader for the special respondent relied.* The suit was, in fact, a suit to recover a certain sum of money, and a question of right was simply raised as a question incidental to the question of the recovery of the money. We think, therefore, that the provisions of Section 27, Act XXIII of 1861, bar a special appeal in this case, and we, therefore, dismiss this appeal with costs.—*8th June* 1869.—*Idem.*

* Special Appeal, No. 2,327, of 1868, from a decree of the Additional Subordinate Judge of Mymensing, dated the 3rd June 1868, affirming a decree of the Munsiff of that district, dated the 15th December 1866.

* Case referred to High Court from Small Cause Court of Kishnaghur; August 26th, 1863.

BAYLEY AND HOBHOUSE, J. J.

Sadat Ali (defendant) *v.* Srimati Sadattunnissa and others (plaintiffs†.)

Suit to eject ryot—Jurisdiction of Civil Court—Act X of 1859, *Section* 23, *Clause* 5—*Collector.*

A suit by a zemindar to eject a ryot who holds on after the period of his lease is cognizable by the Civil Court, and not under Clause 5, *Section* 23, *Act X of* 1859, *by the Collector.*

Baboo *Akhil Chandra Sen* for appellant.

Baboo *Girijasankar Masumdar* for respondents.

HOBHOUSE, J.—This was a suit for possession of lands, the plaintiffs' allegation being that the defendant held those lands on a lease which expired in the year 1227 (1820), and that after the expiry of that lease the defendant refused to turn out, and thereby gave the plaintiff his cause of action.

The defendant set up an istemrari patta, and pleaded in the first Court that the Civil Court had no jurisdiction, the case being one which was determinable only by the Revenue Courts under the provisions of Clause 5, Section 23, Act X of 1859.

On the question of the jurisdiction the first Court found for the plaintiff, but on the merits it dismissed the case. The question of jurisdiction was not determined by the lower Appellate Court, nor was it raised there, and on the merits the lower Appellate Court found against the defendant's istemrari tenure, and gave the plaintiff a decree for possession.

In special appeal it is urged that under the provisions of Clause 5, Section 23, Act X of 1859, the Civil Court had no jurisdiction. That clause,

† Special Appeal, No. 3,014, of 1868, from a decree of the Subordinate Judge of Chittagong, dated the 15th August 1868, reversing a decree of the Munsiff of that district, dated the 11th February 1868.

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for the purposes of this suit, declares that "all "suits to eject any ryot on account of a breach of "the conditions of any contract by which a ryot "may be liable to ejectment, shall be cognizable by "the Revenue Courts only."

The question, therefore, before us is whether the suit was a suit to eject a ryot by reason of the breach of the conditions of any lease by which that ryot was liable to ejectment. Clearly this was not the allegation of the plaintiff, nor the issue between the parties. The plaintiff did not say that, under the terms of the contract between him and the ryot, the ryot was liable to ejectment; but what he said was that there was no contract between him and the ryot; that whatever contract there had been had expired, and that, therefore, the ryot held on, not contrary to any conditions of a contract by which he was liable te ejectment, but as a trespasser without any contract at all; and the ryot himself on his part denied that there had ever been any contract of the nature set up by the plaintiff or that he was a trespasser, and set up another contract in respect of which the Courts have found against him. The case, therefore, is clearly in our judgment one cognizable by the Civil Court, and so the special appeal is dismissed with costs.——12th June 1869.—*Idem.*

KEMP AND GLOVER, J. J.

Bhuli Sing and others (plaintiffs) *v.* Mussamut Nehmu Bhu (defendant.)*

Malikana—Regulation VIII of 1793—*Recurring cause of action—Limitation—Act XIV of* 1859, *Section* 18, *Clause* 16.

HELD (by GLOVER, J.) *that malikana is rent under Regulation VIII of* 1793; *that a cause of action for recovery of arrears of malikana is a recurring cause of action; and that failure to recover arrears for more than twelve years would not bar the right to recover for such period as have not been barred by the Statute—Clause* 16, *Section* 1, *Act XIV of* 1859 *—that is for a period of six years.*

HELD (by KEMP, J.) *that the suit was barred as no malikana had been paid for more than twelve years.*

THIS was a suit for recovery of malikana from the defendants. The defendants set up *(inter alia)* that the suit was barred by limitation.

The Principal Sudr Ameen held that the plaintiff was entitled to recover the malikana from the defendants.

On appeal the Judge held that the plaintiff had failed to prove that he had received any malikana within twelve years of suit, and, therefore, the claim was barred by limitation.

The defendant appealed to the High Court.

Baboos *Kalikrishna Sen* and *Nilmadhab Sen* for appellant.

Baboo *Mahes Chandra Chowdhry* and Mr. *Gregory* for respondent.

GLOVER, J.—In this matter I am compelled to differ with my brother Kemp and with the learned Judges of other Division Benches. I need not say, therefore, that my opinion is come to with much diffidence.

It appears to me that malikana is in the nature of rent. It represents the profit of the proprietor derived from the rents of his estate, and was so understood apparently by Government at the time of the perpetual settlement. In Regulation VIII of 1793, Section 44, malikana is called "an allowance in consideration of proprietary rights," and farmers are directed (Section 45) to pay it monthly according to the "kistbandi fixed for the Sudr jumma." Payment of malikana was enforced in the same manner as arrears of rent. (Section 46.)

Malikana, therefore, has all the elements of rent. It represents the profit which the proprietor would ordinarily receive from the letting of his land, if he continued in occupation thereof, and as the recipient never ceases to be proprietor, although the lands may have been let in lease to others, what he receives as malikana seems to me never to cease to be rent.

If it be rent, then, as it is due only at certain times of every year, failure to pay must, I suppose, be considered as giving a continually recurring cause of action and enable a proprietor to receive all arrears of malikana that may not be barred by the Statute: in the present case, for instance, the proprietor would be able to recover back dues for six years?

KEMP, J.—This is a suit to recover malikana. The Judge found that the plaintiff had not been able to prove receipt of any malikana during a period of twelve years prior to suit. The suit of the plaintiff was, therefore, dismissed as barred. I am of opinion that this decision is correct under the rulings of this Court in *Mussamut Ozerun* v. *Baboo Heranund Sahoo,* * *Heranund Sahoo* v. *Mussamut Ozerun,*† and *Badarul Hug* v. *The Court of Wards.*‡ The appeal is dismissed.—*14th June* 1869.—*Idem.*

JACKSON, L. S., AND MARKBY, J. J.

Srimati Saudamini Dasi, mother and guardian of Shama Charan Mitter (one of the defendants) *v.* Srimati Thakomani Debi (plaintiff.)§

Suit for money paid as rent—Jurisdiction of Civil Court.

The plaintiff sued to recover money, which she had paid as rent to the zemindar under a decree of the Revenue Court, after she had already paid her rent to his Goomastah.

HELD *that the suit was not cognizable by the Civil Court.*

Baboos *Ashutash Chatterjee* and *Ashutash Dhar* for appellant.

Baboos *Gopinath Mookerjee* and *Hem Chandra Banerjee* for respondent.

JACKSON, J.—This case is very clear. The plaintiff alleges that she had paid the rent to the zemindar's goomastah or agent. Subsequently a suit was brought against her by the zemindar, and she was compelled to pay over again the rent which she had already paid. The present suit is, in fact, to recover, by decree of the Civil Court, the money which she has had to pay under the Revenue

* Special Appeal, No. 701, of 1869, from a decree of the Judge of Gya, dated the 7th January 1869, reversing a decree of the Principal Sudr Ameen of that district, dated the 10th July 1869.

* 7 W. R., 336. † 9 W. R., 102. ‡ 10 W. R., 302.

§ Special Appeal, No. 3,325, of 1868, from a decree of the 1st Subordinate Judge of Hooghly, dated the 27th November 1868, reversing the decree of the Munsiff of that district, dated the 23rd July 1868.

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Court's decree. It seems to me that the decision of the Munsiff, who held that the suit could not lie, is quite correct. The Principal Sudr Ameen was wrong in thinking that the suit was cognizable in the Civil Court, and I think also that the precedent, *Gocool Chunder* v. *Ali Mahomed** referred to by him, is quite inapplicable. It relates to a different subject. I think, therefore, that the decision of the Subordinate Judge must be set aside, and that of the Munsiff restored with costs.

Markby, J.—I am of the same opinion.—*28th June* 1869.—*Idem.*

Bayley and Hobhouse, J. J.

Hari Kishor Dutt and others (plaintiffs) *v.* The Collector of Dacca and another (defendants.)†

Nadi Bharati—Accretion.

Nadi Bharati, or land raised out of the river, is not an accretion, and belongs to the person to whom the river was released by the Resumption Authorities.

Mr. *G. C. Paul* and Baboos *Chandra Madhab Ghose* and *Ananda Chandra Ghosal* for appellant.

Baboo *Jagadanand Mookerjee* for respondent.

Bayley, J.—The plaintiff in this case sued for possession of two plots of land as belonging to his Patni Mehal, which he says he acquired from one Aka Golam Ali. The plaintiff's allegation was that his cause of action arose from the fact of the lands being demarcated in Magh 1264 (1857) as Jagir and Khas Mehal lands in the Dacca Collectorate, and that then his lessor, Golam Ali, and he himself were dispossessed. The defendants pleaded limitation and their right to the lands as Jagir and Khas Mehals.

The first Court held that the suit was barred by limitation.

In appeal the Judge records (and this is not disputed) that the whole matter of appeal was confined to an area of 3 kanis, 14 cowries of land, in plot No. 2 only. The Judge upheld the decision of the first Court on this point. He found that the lands in suit belonged to the defendants' Jagir and Khas Mehals. The plaintiff appeals specially, and in special appeal there is no contention as regards the lands in plot No. 1. The special appeal is only limited to the 3 kanis, 14 cowries of the lands in plot No. 2.

It is urged that the lower Appellate Court has not tried the question raised in the plaint and in the case throughout, viz., that plot No. 2 was "Nadi Bharati" (land raised out of the river) of the plaintiff's property released by the resumption officers, that is to say, the plaintiff's contention is that by the resumption proceedings, the river, measured then to contain 2½ drones, was made over to him as part of the estate which would not be resumed, but was released with other property to him. The plaintiff alleges that the portion of the lands marked A. in the Ameen's map represents the land which, in fact, had taken the place of the water comprised in the property released to him in the 2½ drones above mentioned.

On the other side, Baboo Jagadanand Mookerjee for special respondent contends that the point of limitation has not been adjudicated by the lower Appellate Court, although that point formed the basis of the decree of the first Court.

It appears that the lower Appellate Court has found as a fact that the land in suit was an accretion to the defendants' property; but the Court has not tried the point contended for by the plaintiff, viz., that the 3 kanis, 14 cowries of the land which formed the "Nadi Bharati" or land raised out of the water, and taken the place of the water of the river, were not accretions, but merely substitution of land for water of the river 2½ drones, which were released to the plaintiff by the resumption officers. Nor has the lower Appellate Court decided the point of limitation which was raised by the defendants. In both these respects there seem to us to be defects in the investigation of the case by the lower Appellate Court affecting its decision on the merits.

We, therefore, remand the case to the lower Appellate Court, to be re-tried on the evidence on the record on the following issues :—

1*stly*.—Whether limitation has barred the plaintiff's suit; and if not

2*ndly*.—Are the 3 kanis, 14 cowries of land in plot No. 2 claimed by the plaintiff as "Nadi Bharati" actually lands which have taken the place of the water of the river released to him in the 2½ drones specified in the order of release by the resumption authorities.

The costs of this remand will follow the result.—*3rd July* 1869.—*Idem.*

HIGH COURT—BOMBAY.

Hari *bin* Joti *v.* Narayan Acharya.

Inamdar—*Rent—Power to raise rent—Government survey.*

An inamdar, *though he cannot eject his tenants who have been in possession before the grant of the* inam, *as long as they pay the rent due for their land, may nevertheless raise such rent at his pleasure, (they not having acquired a prescriptive title), and is not restrained in doing so by the rates fixed by the Government survey.*

Special Appeal No. 534 *of* 1868.

This was a special appeal from the decision of A. C. Watt, Acting Assistant Judge at Sattara, in Appeal Suit No. 239 of 1868, amending the decree of the Munsiff of Sattara.

The plaintiff, Narayan Acharya, sued to recover from the defendants, Hari Joti and others, rent for the year 1863-64 for some land which he alleged they had held from him, it being his ancestral *inam*. The plaintiff alleged that, as he had a right to demand any rent he pleased, in October 1862 he sent a registered notice to the defendants saying that they must pay Rupees 150 a year. This they did not do, but paid Rupees 75 only. He, therefore, sued to recover the balance from the defendants severally.

The defendants answered that the land was their *miras*; that in the time of the Maharajah they paid the plaintiff Rupees 80 *chandvadi*; that by the survey the assessment was fixed at Rupees 107; that they were not liable to pay the amount demanded by the plaintiff, since he has by his

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* 10 W. R., 7.

† Special Appeal, No. 616, of 1869, from a decree of the Judge of Dacca, dated the 17th December 1868, affirming a decree of the Sudr Ameen of that district, dated the 25th March 1868.

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anad a right to demand Rupees 80 only, and that the plaintiff had sued to eject them but had failed to do so.

The suit was brought in the Court of the Mamlutdar; but under the new Act* it was transferred to that of the Munsiff, who found that the amount demanded by the plaintiff was excessive, but that the defendants were liable to pay what was demanded.

The issues framed on appeal were—

"1. Had the plaintiff a right to demand Rupees 150 rent for the land?

"2. Have the defendants proved that they have acquired a prescriptive right to enjoy the land at any less rent?

"3. Did the defendants pay the *judi*; and, if so, what ought to be deducted on that account?"

The finding of the Assistant Judge on these points was—

"On the first two points the appellant certainly does not rely much, and all I need say is that, unless under certain circumstances the *inamdar* has a perfect right to raise the assessment of his land, and this right was recognized by Government in what are called the Joint Rules at the time of the survey.

"On the second point the defendants have not proved that they have had the land at an uniform assessment for such a time as has given them a prescriptive right to pay that uniform assessment in future. In fact, the defendants' *kaifayat* itself almost contains an admission that they were liable to pay the survey assessment, which was an increase over their former assessment, and they seem to have paid the higher rate, namely, Rupees 107. Their payment, therefore, has not been uniform for thirty years.

"On the third point I find, from the evidence afterwards produced, that the defendants did pay Rupees 33-7-0 as *judi*; and, as this is a charge which the plaintiff as *inamdar* is liable for, both parties' pleaders admit that it must be deducted. I, therefore, deduct this sum from the amount awarded by the Munsiff, and find for the plaintiff in Rupees 41-9-0 with costs in proportion."

The case was heard before COUCH, C. J., and GIBBS, J.

Dhirajlal Mathuradas for the appellants:—When the land was given in *inam* on the 3rd November 1829 by the Rajah of Sattara, it was assessed at Rupees 60. In 1860 the plaintiff sued to recover possession; but his claim was rejected on the ground that the *inamdar* was the assignee of the assessment, and that the defendants were in possession when the assignment was made. He then sent a notice to increase the rent. It is contended that he has no right to levy more than the rates fixed by the survey. The defendants were tenants prior to the *inam* grant, (*vide* para. 11 of Exhibit No. 31). There was a general survey in the country, and the land in dispute was surveyed and assessed at Rupees 107. [COUCH, C. J.—The *inamdar* cannot deprive the tenants of possession, because they had it before the grant and under the Government; but he is not bound to observe the Government rules in regard to assessment.] The question is, whether there is any limit to the *inamdar's* right to increase the rent. [GIBBS, J.—The *inamdar* having to live on his *inam* may fairly levy a higher rate than what is levied by Government, but if the assessment is such as to show that the object in putting the excessive rent on is virtually to eject the tenant, the case would have to be considered.] The plaint does not seek to make all the defendants liable jointly.

Vishvanath Narayan Mandlik for the respondents.

PER CURIAM:—The Court amends the decree of the Acting Assistant Judge by ordering that Rupees 41-9-0 be paid by the several defendants in the proportions in which Rupees 75 are claimed from them in the plaint. The costs of the special appeal to be borne by the special appellant.—*1st February 1869.—Bombay High Court Reports, Vol. VI, Part I.*

Nanabhai Rustamji *v.* Pestanji Jamsetji.

Tenant from year to year—Notice to quit—Six months' notice.

When there is no custom of the country to the contrary, six months' notice to quit is proper notice. This period must have elapsed before the plaint is filed, and the time occupied in the suit before decree cannot be counted.

Special Appeal No. 635 of 1868.

THIS was a special appeal from the decision of N. M. W. Daniell, Acting Judge of the district of Surat, in Appeal Suit No. 120 of 1868, confirming the decree of the Munsiff of Balsar.

The plaintiff brought this suit to recover from the defendant possession of certain land. He also claimed to recover rent for the same for two years and ten months. The following is a translation of the agreement under which the defendant held the land from the plaintiff:—

"I will pay you every year the amount of the said rent as it falls due. If I do not pay the rent and you ask (me) to vacate your land, I will then (immediately) duly vacate and make over the land to you. If you call upon me to vacate the land and if I do not vacate it or even pay the amount of the rent, you are at liberty to compel me by a suit to vacate the land."

The defendant replied that only eight yards of the land belonged to the plaintiff; that the land on the north side did not belong to the plaintiff alone, but that a portion belonged to one Kolobhai; and that rent was due only for the current year.

The Munsiff held that the plaintiff was entitled to recover possession of the land, and that the claim for rent was proved to the extent of Rupees 24-2-8.

In appeal the Acting Judge delivered the following judgment:—

"The appellant argues that, according to the terms of the lease, the respondent can only recover possession if the appellant fail to pay the rent. I do not see that this point was distinctly raised in the lower Court; but it is one which may be considered now, as the appellant's arguments are confined to the virtue of the bond. I do not read the bond to mean that the owner is barred from recovering so long as the rent is paid. The clause says that, if the rent be not paid, the owner may at once resume the land. The lease is for no definite period, and to construe the lease as an interminable instrument at the option of the appellant would, in my opinion, be a misinterpretation of the agreement, and would be inequitable. The clause

* Bombay Act II of 1866.

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seems to me to mean that the appellant, so long as he pays rent, can prevent the respondent recovering immediate possession if cause be shown for delaying recovery.

"It is argued that in the bond it is agreed that the rent shall be paid annually. The present award has been for ten months' rent. The cause of action could not arise until the expiry of a year.

"On the first issue I rule that the respondent can recover possession of the land; on the second issue, although the terms of the bond are for the payment of an *annual* rent, I consider in equity that the respondent is entitled to the rent for the portion of the year preceding recovery, and that the right of recovery arose when he took action to recover possession of the land.

"I rule that the claim to rent is proved to the extent awarded in the lower Court. The decree of the lower Court is confirmed with costs."

The case was heard this day before Couch, C. J., and Gibbs, J.

Nanabhai Haridas for the appellant:—The Judge has held that rent was not due at the time when possession was demanded, and we had no notice of the tenancy being determined.

Shantaram Narayan for the respondent:—The lease is not terminable only by default of payment. Whether we have put an end to the lease has not been determined. Here the period occupied by this suit was a sufficient notice of the determination of the tenancy as ruled by this Court: *Nasavanji Hormasji* v. *Narayan Trimbak*.*

Couch, C. J.—The lease (No. 2) cannot be construed as creating more than a yearly tenancy, as we find no words in it indicating that the tenancy was to be for a longer period, or of a permanent nature. It was by its terms determinable by failure to pay the rent annually, or by a reasonable notice. A Court of Equity will relieve upon payment of the rent, when possession is demanded on the ground that the rent due had not been paid. Now, what is a reasonable notice depends upon the custom of the country; and, in the absence of any custom, six months' notice would, I think, be a fair one.† In order to enable the plaintiff to recover in this case, he should show a failure of payment and a demand of possession, or that he had determined the tenancy by a notice. The plaintiff sued for rent for two years and ten months; but, on the defendant's alleging that he had paid the rent for two years, the plaintiff gave up his claim for that, (*vide* Exhibit No. 9). The motive under which the plaintiff did this does not appear, but the claim was withdrawn, and the rent found due was only for ten months; consequently, we cannot hold that there was a failure to pay the rent. We must, therefore, consider whether there was a notice to quit. The plaint was brought soon after the demand for possession was made, so there was no notice, and I cannot assent to the doctrine that the defendant can avail himself of the time occupied by this suit. We must, therefore, reverse the decrees of both the lower Courts on the ground that the tenancy had not been determined when this suit was instituted. The plaintiff will be at liberty to bring a fresh suit upon a determination of the tenancy since the institution of the present suit, either by a proper notice or by a failure to pay rent.

Gibbs, J.—I concur. With regard to the case of *Nasavanji* v. *Narayan (supra)* in which we held that the institution of the suit, which had lasted for more than two years, might be held to be a sufficient notice to quit, the facts were very peculiar. There, the agent of an *inamdar* gave lands on *suti* tenure without the consent of the *inamdar*, and it was found by us that the agent was guilty of fraud. It was urged there also that there was no notice to quit, but the tenants were considered *particeps criminis*, I think, and, therefore, we thought they might be turned out without any notice.

Couch, C. J.—If so, the tenants were not entitled to any notice to quit, seeing that they had got the land from an unauthorized person.—*Decrees reversed.*—2*nd March* 1869.—*Idem.*

Lakshuman Ramji *v.* Ramlal *valad* Mahipati.

Limitation—Mirasdar—*Land allowed to lie waste by* Mirasdar.

Where a Mirasdar *left his* miras *in* 1850 *without executing a* razinama *resigning it, and the* miras *lay waste until* 1855, *when the defendant took it up and cultivated it,*

It was held *that the cause of action of the* Mirasdar *arose in* 1855, *when the* miras *was taken up by the defendant.*

Special Appeal No. 53 *of* 1869.

This was a special appeal from the decision of M. B. Baker, Assistant Judge of the district of Khandesh, in Appeal Suit No. 28 of 1867, reversing the decree of the Munsiff of Tengora.

Lakshuman Ramji Patil in 1866 sued Ramlal valad Mahipati to obtain possession of his *miras* land, which, in 1850, when he left his village, he had made over to Ramlal on condition that the latter should give up possession to him if he ever returned to the village.

The defendant replied that the field was Government land; that the plaintiff never allowed him to cultivate it, nor did he (the defendant) agree to give it up to the plaintiff; that the field was waste from 1847 to 1854-55; that the defendant cultivated it in 1855-56; and that the plaintiff's claim was barred by Clause 12 of Section 1 of Act XIV of 1859.

The Munsiff finding that the land was the plaintiff's *miras*, awarded him possession of it. In appeal the Assistant Judge reversed the Munsiff's decree, observing—

"The respondent's *vakil* has urged that, as the appellant has not been in possession for thirty years, he has no title. I do not think this argument is good, for it appears that the respondent simply let the land lie waste in 1850, and that the appellant took it up in 1855 or 1856 from Government and not from the respondent. Hence I consider that S. A. No. 334 of 1867, *Arjuna valad Bhiva* v. *Bhavan valad Nimbaji** is on all fours with this case, and that, as the respondent gave up his land by allowing it to lie waste in 1850, the period of limitation is to be reckoned from that time, and that the respondent is not dependent upon prescription for his title. Evidence has been adduced to show that the appellant allowed the respondent to cultivate half the land; but I do not

* 4 Bom. H. C. Rep. A. C. J. 125.

† *Vide* Sec. 43 of Bombay Act I of 1865.

* 4 Bom. H. C. Rep. A. C. J. 133.

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consider that this can be looked upon as such an acknowledgment of the respondent's proprietary right as to warrant the period of limitation being reckoned from the time the appellant allowed the respondent to cultivate, so that, as alleged by the respondent, the cause of action should be considered to have arisen when the appellant refused to let him cultivate any longer."

The case was heard this day before COUCH, C. J., and WARDEN, J.

Nanabhai Haridas for the appellant:—The defendant obtained the land from Government in 1855-56, and his adverse possession did not commence until then. The decision of the High Court quoted by the lower Court does not apply, as in that case there was a *razinama* given on surrendering the land, which was not done here.

Vishvanath Narayan Mandlik for the respondent.

COUCH, C. J.—It appears from the facts of this case that there was no cause of action until the defendant took possession of the land. The land was lying waste from 1850 to 1855, and the plaintiff could not then have sued any one for it, but he might himself have cultivated it at any time during that period. In the case quoted by the lower Court there was a *razinama* given by the original *miraslar*, the grandfather of the plaintiff, and, therefore, it was held that the right of the plaintiff was affected by the *razinama*, and that the cause of action as regarded the plaintiff accrued on the date of that *razinamah*. In this case nothing occurred till 1855, when the land was taken up by the defendant for cultivation; and, counting the period of limitation from that time, the present claim is not barred. We must, therefore, remand the case to the Appellate Court for re-trial on the merits.

WARDEN, J., concurred.—*Case remanded for trial.* —23rd *March* 1869.—*Idem.*

HER MAJESTY'S PRIVY COUNCIL.

[BENGAL CASES.]

Right to enhance rent—Shikami talukdars—Onus probandi—

Where A, a Zemindar, brought a suit to enhance the rents of certain lands held by B, &c., the defendants pleaded that they were Shikami talukdars; that they and their ancestors had become so before the decennial settlement, and that they held the taluk at a fixed rent—

HELD *that in order to bring a taluk tenure within the meaning of Reg. VIII of* 1793, *it was not necessary that the taluk should have been registered, recorded, or recognized, but that it was sufficient if the tenure existed and was capable of being registered at the date of the decennial settlement; that as against talukdars within the 51st section, it was incumbent on the zemindar to shew the right to enhance rent by special custom, or by contract, or by reason of certain specified conduct on the part of the talukdar; and that as the zemindar failed to shew it, the suit must be dismissed.*

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Bamasoondery Dossee *v.* Radhika Chowdhrain and others from Bengal, delivered December 13th, 1869.

Present.

LORD CHELMSFORD.
SIR JAMES W. COLVILE.
SIR JOSEPH NAPIER.

SIR LAWRENCE PEEL.

The only question upon this appeal is whether the respondent is entitled to enhance the rents of certain lands held by the appellants within the zemindary of which the respondent is the owner of a six-anna share. In the Courts below some questions were raised touching the respondent's title to her share; the sufficiency of the notice, which is the statutory commencement of such a suit; and the justice of the particular assessment, supposing that the rents were liable to enhancement at all; but these are no longer in dispute.

A suit to enhance proceeds on the presumption that a zemindar holding under the perpetual settlement has the right, from time to time, to raise the rents of all the rent-paying lands within his zemindary, according to the pergunnah or current rates, unless either he be precluded from the exercise of that right by a contract binding on him, or the lands in question can be brought within one of the exemptions recognized by Regulation VIII of 1793; and it also assumes that the defendant has some valid tenure or right of occupancy in the lands which are the subject of the suit. Before the recent modification of the law (which, as Act X of 1859, had not come into operation when this suit was commenced, does not affect the case), the effect of this presumption in favour of the zemindar was undoubtedly to relieve the plaintiff in a suit for enhancement from much of the burden of proof, which would have lain upon him in an ordinary suit, and to shift it upon the defendant. Regulation VIII of 1793, however, does not apply an uniform rule to all, tenures and rights of occupancy. It may be broadly said that it divides them into two great classes, viz., talooks within the meaning of its 51st section, and ryotty and other under-tenures, for which provision is made by the 49th section. If it be conceded that the law casts upon those who claim the benefit of the latter section the whole burden of proving that their land has been held at a fixed rent for a period commencing at least twelve years before the date of the decennial settlement, it is clear that the 51st section is more favourable to the holders of talooks within its meaning, by imposing upon the zemindar the burden of showing that he is entitled to raise the rent either by special custom or by contract, or by

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reason of certain specified conduct on the part of the talookdar. It follows that in every suit for enhancement of rent the nature of the tenure is a material question irrespectively of the question whether the rent is fixed or variable, since upon the former question depends the extent and nature of the proof which the plaintiff is bound to give.

In the present suit the respondent has come into Court treating the defendants to the suit as ryots, having a right of occupancy in certain lands at a variable rent. The case set up by the appellants was that they were Shikmy Talookdars; that they and their ancestors had become so many years before the decennial settlement; and that they held the talook at a fixed rent. In this state of things it is obvious that the issue settled by the Principal Sudr Ameen, viz., "whether the mehal in dispute is liable to enhancement or not" is not sufficiently pointed, because, in order to determine not only that issue but also the mode of trying it, it is necessary to determine the preliminary question whether the tenure of the appellants was or was not a talook within the meaning of the 51st section of Regulation VIII of 1793.

To the consideration of this question their Lordships will first address themselves, and they will assume that, as the law stood before Act X of 1859 came into operation, the burden of establishing the affirmative of it lay upon the Appellants.

The appellants produced in the Courts below two kabalas and a settlement paper, all dated long before the decennial settlement, in order to prove and explain the creation of their tenure; and a number of dakhilas, or receipts for rent, to show the payment of rent at an uniform and fixed rate. The Courts in India have rejected these documents as spurious, or, at least, untrustworthy; and their Lordships accept that finding, and propose to act upon it by leaving them out of consideration.

The fact, however, remains that the appellants derive title from Roopram and Joykristo Ghose, who are admitted in the replication to have held the lands in question under one Ramchunder Bose, from whom the zemindary passed to Kissen Sing and Gungarain, through whom the respondent derives her title, some time before the decennial settlement. The fact is, therefore, admitted that the tenure of the appellants, whatever it be, existed before, and at the time of, the decennial settlement. The proceedings before the Collector at least prove that as early as 1797 the then holders of that tenure asserted that it was a talook capable of being separated under Regulation VIII of 1793 from the zemindary, and entered in the Collector's books as a talook paying revenue directly to Government.

It appears from these proceedings that the zemindar, although he did not at first appear, ultimately came in and resisted the demand, and that no final decision was come to. It does not appear what were the grounds of his defence, and it is quite consistent with the evidence that he admitted the existence of a talook; but contended either that it was held at a variable rent, or that, by reason of some beneficial interest reserved to the zemindar, it ought not to be separated from the zemindary but to continue a dependent talook. Again, by comparatively modern dakhilas, produced and proved in the cause, it appears not only that rent at the uniform rate of C. R. 168 : 4, being the equivalent of S. R. 158 : 4 : 15½, has been paid and received for this holding from 1245 to 1264 B.S., or from 1838 to 1857; but that in those dakhilas the holding was described as "Talook Roopram Ghose and Joykristo Ghose." The notice which was the commencement of this litigation was served in the year 1264 B.S. The Jumma Wassil Bakee at p. 51 is, so far as it goes, corroborative evidence of the appellants' case, inasmuch as it shows that by a document which from its nature would seem to have proceeded from the cutcherry of the zemindar, and was filed in the Collectorate in the year 1810, the lands in question are described as Talook Roopram and Joykristo Ghose, and as held in 1804 at a rent of S. R. 158 : 4 : 15 : 1. Their Lordships, however, do not lay much stress on this document, inasmuch as the respondent disputes its binding force on her, and the evidence concerning it is scanty and not very satisfactory.

The evidence, however, above stated seems to their Lordships sufficient to establish at least a *primâ facie* case that the holding of Roopram Ghose and Joykristo Ghose, which existed before and at the date of the decennial settlement, was a talook, and is identical with the present holding of the appellants. Such a case called for an answer from the respondent, and no answer in the way of evidence has been given by her to it.

It may be added that the judgment of the High Court seems to treat the tenure as being in terms a talook, and even a talook in existence at the time of the decennial settlement, though afterwards it speaks of it as a talook created at some unknown period, but having a fluctuating rent. The judgment, too, of the Principal Sudr Ameen, which also allows the deduction of ten per cent. for the expenses of collection, seems to treat the tenure as an intermediate tenure, *i. e.*, something higher than a mere ryot's hereditary right of occupancy.

It is said, however, that the tenure, if a talook, is not a talook within the meaning of the 51st section of Regulation VIII of 1793 unless it is shown to have been registered under the 48th section of that statute.

This proposition is undoubtedly supported by the cases decided on the 30th June and 10th August 1847, and reported at pp. 292 and 413 of the Bengal Sudr Dewanny Adawlut

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Reports for that year; by the case decided on the 29th August 1850 and reported at p. 451 of the reports for that year; and by the case decided on the 31st May 1859 and repotted at p. 607 of the reports for that year. But it is not consistent with the case decided on the 30th April 1858 and reported at p. 902 of the volume of reports for 1858, in which two of the Judges, who afterwards decided the case of 1859, extended the benefit of the 51st section to the tenure of a kudeemee ryot,—a tenure which their Lordships apprehend was not subject to be registered under the 48th section, and was certainly not shown to have been so registered in fact. And this doctrine of the necessity of registration has been questioned and overruled by the cases decided in the High Court on the 28th February 1863 and the 23rd January 1867, of which the first is reported at p. 220 of Hayes' Reports of the decisions of the High Court for 1863, and the other is reported at p. 63 of the 7th volume of the "Weekly Reporter."

The effect of the authorities in India seems to their Lordships to be that, although for several years it was held by the late Sudr Dewanny Adalut that in order to bring a talook within the scope of the 51st section it must be shown to have been "registered," "recorded," or "recognized" (for all three terms are used in the cases) at the time of the decennial settlement, that construction is no longer recognized as law by the High Court; and that it is at all events sufficient to show that the tenure existed, and was capable of being registered at the date of the decennial settlement. It follows that their Lordships are not compelled by a long course of uniform decisions to put upon the clause in question a construction narrower than that which, in their judgment, its words warrant. And applying this view of the law to the evidence which, though scanty, is uncontradicted, they must find as a fact that the tenure of the appellant is a dependent talook within the meaning of the 51st section of Regulation VIII of 1793.

Whether such a finding ought not of itself to be an answer to the present suit is a question which is certainly open to argument, for it may well be said that a plaintiff who brings a suit founded on his rights against a ryot in occupation of land ought not to be allowed to convert that suit into one founded on a different right and governed by a different rule. Their Lordships, however, without pressing that point, think it sufficient to say that the effect of such a finding is to cast upon the respondent the burden of showing that the rent is variable, and that, if there is no evidence of that fact in the cause, her suit must fail.

It may be said, however, and that seems to have been the opinion of the High Court, that the evidence given by the appellants itself affords proof that the lands were held at a variable rent. But that opinion seems to their Lordships to be founded on a misconception of the effect of the proceedings before the Collector between 1797 and 1801. The proceeding of the 2nd of September 1800 at p. 49 shows that whatever inaccuracy there may have been in the petition stated at p. 48 (and the document appears on the face of it to be worm-eaten and imperfect) the case really put forward at that date by the appellants' ancestors was that they were the holders of a talook at a rent of S. R. 158: 4: 15: 1. Their Lordships are, therefore, of opinion that upon the evidence in the cause the respondent must be taken to have failed to show that the talook was held at a fluctuating rent; or that she is entitled to enhance the rent, which is proved to have been paid at an uniform rate for so many years.

Their Lordships have further to observe, that if the respondent's case were a true one she would have had little difficulty in proving it. She does not come into Court as the purchaser at a sale for arrears of revenue who rests upon a statutory title with no documents to support it. She derives title from the zemindar with whom the decennial settlement was effected, and she has presumably a right of access to all the records of the zemindary. Her determination in such circumstances to rest upon the supposed defects in the appellants' proof and to abstain from giving evidence of the truth of her own case affords strong grounds for supposing that she had, in fact, no such evidence to give. If such evidence were forthcoming, and she has neglected to give it, she must take the consequences of her own miscarriage.

Their Lordships will humbly advise Her Majesty that the three decrees under appeal ought to be reversed, and that in lieu thereof a decree should be made dismissing the respondent's suit with costs. And the costs of this appeal must follow its result.

Trust for religious purposes — Prior partition deed—

In a suit by the heirs and representatives of 4 *out of* 5 *brothers, who formed at one time an individual Hindu family, to establish a trust of a religious nature said to have been created by a partition deed executed by the then members of the family in* 1838—

HELD *that there was a prior deed of partition executed and repeatedly acted upon, and that no valid trust could therefore be created.*

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Sreemutty Sokheemonee Dossee and others *v.* Mohendronath Dutt and others from Bengal, delivered 18th December 1869.

Present.

LORD CHELMSFORD.
SIR JAMES W. COLVILE.
SIR JOSEPH NAPIER.

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SIR LAWRENCE PEEL.

This appeal is brought to reverse a decision of the High Court at Calcutta which reversed a decree of the Judge of Beerbhoom in favour of the plaintiffs, the appellants.

The suit was instituted by the plaintiffs, who are the heirs and representatives of four out of five brothers, who formed at one time a Hindu family joint in food, worship, and estate. The defendant Hurreenauth was the son and heir of the remaining brother. Hurreenauth during the progress of this litigation died, and is represented by his eldest son, the first-named respondent, and his younger brothers, who appear by their guardian.

The object of the suit is to establish a trust of a religious nature against the several respondents as affecting the lands in their several occupations. The suit originally included two claims which could not properly be joined, viz., a claim in the character of sebaits to establish the religious trust, and one founded on the ordinary right of co-heirs in ordinary joint property.

On the objection of misjoinder being raised by the answers of the defendants the plaintiffs yielded to it, and their plaint has in that respect been reformed, so that the suit must now be regarded as confined to one in the character of sebaits, to establish their claim to lands alleged to be dewuttur.

A further objection was advanced by the answers that the plaintiffs attributed a partible character to an indivisible property by sueing for four-fifths only. The Judge of Beerbhoom, admitting the correctness of this view of the nature of such property on which the objection was grounded, appears to have considered the plaint as one that might be supported by attributing to the plaintiffs the character of managers. Whether this view of the subject removed the objection may well be doubted, since such a manager has no partible, and, indeed, no estate in the lands; and a trust of this character should follow the general rule, and be asserted and established by a suit so framed as to decide finally and entirely the matter of the claim. Their Lordships, however, regarding the point as one which does not affect the merits of the suit, will proceed to the consideration of the case on the merits.

The plaintiffs state their case thus: By a deed of partition executed by the then members of the family in the year 1245 of the Bengal era answering to the Christian year 1838, the trust was established; the family was then a continuing joint family, and, as such, they dedicated a portion of their joint property to the service of their gods at Brindobun and their family mansion respectively. The alleged foundation, therefore, of the trust was the common consent so to appropriate their common property; and, if this foundation failed, the trust would necessarily fall with it.

The plaintiffs state in their plaint that at an earlier period, viz., the Bengal year 1229 answering to our Christian year 1822, a deed of partition had been executed by the five brothers, who were then all living; but they sought to remove this impediment and *primâ facie* bar to their subsequent endowment by alleging that the partition was not acted on nor designed to be so, being, in truth, a mere device of the family to protect its property from the creditors of one of its members, Gopeenauth, who had become insolvent.

The answers of the defendant Hurreenauth and those claiming under his title, viz., Isserchunder, the defendant Bose, and the Coal Company, on the contrary assert (amongst other matters) the validity of this prior deed, that it was acted upon, that it was repeatedly established by decrees of several courts of justice, that property has been distributed and titles derived and enjoyed under it. And they add that it was publicly registered.

Against the deed of 1838 they allege that it was not registered; that it was not stamped; that it had no original character of publicity; that Gopeenauth, an insolvent, is treated under it as equally entitled with the other sharers; that it makes no allusion to the previous deed; that it secularizes some property already devoted to the gods, and incapable of such change or transfer; that without any assigned reason it constitutes the insolvent the sebait, and sets up a divided and separate administration of trust for one common object; and for these and some other grounds they declare this latter deed to be false and fabricated.

The contest, in the opinion of their Lordships, may be decided by declaring to which of these deeds effect should be given, for clearly they cannot both stand together.

The objections raised by the several answers to the case made by the plaintiffs are compendiously and correctly stated at pp. 53 and 55 of the record in the form of a statement of issues. The first, third, and fourth are those on which their Lordships will proceed to declare their opinion. A decision on these will render it unnecessary to consider the other issues.

The first, second, and third issues are—

Whether the case is affected by the law of limitation?

Whether the partition took effect in 1229 or 1245?

Whether the disputed villages were given in debutter or not?

The first issue was found by the Beerbhoom Court in favour of the plaintiffs, and by the High Court in favour of the respondents, the defendants.

As the plaint was originally framed, this issue was correctly introduced. When the plaint was reformed and limited to a suit in the character of sebaits against trustees, limitation of time afforded no bar; the decisions, therefore,

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of both Courts on this issue are formally defective; but, as in both Courts its decision involved one on the validity of the trust itself, the substantial question was, in truth, considered and decided on the merits.

The third issue involves the second, not necessarily, indeed, but as the facts are pleaded and presented in this case.

The plaintiffs do not say that a partition once took place, but that the family re-united and then made a fresh and operative partition of its then joint property, and dedicated a portion of that joint property by common consent to the service of the gods, constituting the land dewuttur.

The case of re-union and subsequent partition is not made by the pleadings, and is unsupported by the evidence.

The plaintiffs' case assumes, and assumes rightly, that a valid partition acted on would render the second deed inoperative. A Hindu family, consisting of persons in this near connection, may re-unite; part also may re-unite; and such re-united members may impress on their united property by common family consent such trusts as their law will support; but neither of these cases is that before their Lordships.

The burden of proof is on the plaintiffs. The deed of 1229 has the ordinary legal presumption in its favour that it is honest, and is, what it purports to be, a deed of partition. It is also prior in time. It is *primâ facie* a good and operative deed. It cannot be got rid of except by the establishment of a case by the plaintiffs as part of their proof, which involves all the family at that time, including those under whom they derive title, in the perpetration of a gross fraud. The deed of partition is declared by their pleading to have been designed for the express purpose and object of defeating creditors. It is, however, said in the pleadings not to have been acted on. It is not clear in what sense this phrase is used, unless it be that all outward acts of the family in acting upon it disguised an inward design at variance with that which their actions declared. There is the most abundant and, indeed, uncontradicted proof that this deed was by Hurreenauth and his vendees produced, established, and made the subject of various decrees. It is unnecessary to state the instances of this, which were brought to the notice of their Lordships by Sir Roundell Palmer in his exhaustive argument. Mr. Field in reply did not deny that such was the case in numerous instances; but he answered that these acts were all the natural and premeditated results of the original device; that, as it was a deed to defraud creditors, it would, of course, be used as such, and that such proof did not exclude the supposition that it might be considered *inter se* by the members of the family as a mere writing, working no change of property amongst them. Without expressing any opinion upon the question whether a plaintiff supporting his case against those in possession whom he seeks to evict can be admitted to allege the inoperative character of an instrument by which his recovery would otherwise be barred on the ground of a fraud in its concoction, to which all from whom he derives title are parties,—their Lordships, treating the question as one unaffected by such estoppel, and one simply of evidence arising on the facts, have to observe that, as all these public acts would equally attend the enforcement of an honest and valid deed of partition when the estates derived under it are assailed or rights derived under it have to be enforced, they furnish of themselves no evidence of *mala fides*, and should be rather ascribed to the character given to the deed by the defendants than to that imputed to it by the plaintiffs.

Their Lordships, therefore, are of opinion that the issue whether the partition took place under the deed of 1229 or that of 1245 should have been found in favour of the respondents, which finding should, in their Lordships' opinion, have been followed by a corresponding finding on the third, whether the villages were given in debutter or that they were not so given.

Their Lordships desire to add that their conclusion on the effect of the whole evidence as to the subsequent deed does not materially differ from that of the Judges of the High Court, so far as that Court regarded it as insufficient to establish a trust of this character. The altered state of the family property, their increasing expenses and diminishing means, render it improbable that the family really deliberately resolved and effected that resolution to place out of their control, by a legal dedication, so large a proportion of their remaining property. When it is considered that in this case the plaintiffs have advanced, as a part of their case, that a solemn deed registered and purporting to effect a valid partition of their property was designed to have no such effect but was merely a blind for a covert purpose, their Lordships must ask what confidence can a court of justice repose in their statement, that one less solemn and public, and accompanied by many most suspicious circumstances, was designed to be a real and effective instrument of endowment, assented to by the whole family? Whatever may have been the real intention of some of the members of the family amongst themselves, a fact almost impossible to discover amongst the windings of guile and fraud, purchasers, at least, have an undoubted right to bind them, by these their public acts, to the fulfilment of those obligations which such public acts cast upon them. Courts ought not to credit readily assertions of hidden and fraudulent intentions which made to-day for one purpose may be abandoned or denied to-morrow for the assertion of another and inconsistent one.

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Their Lordships do not mean to apply the above observations to any mere benamee transaction or in any way to shake the authority of the numerous decisions which have established, between the apparent and the real though concealed title, that a benamee transaction devoid of fraudulent design may be made the foundation of a decree in a court of justice.

Their Lordships will humbly advise Her Majesty that this appeal be dismissed with costs.

[N. W. Province Case.]

Sale of confiscated property—Ratification by Collector—No ground for setting aside—

A certain landed property was confiscated by Government in consequence of the participation by the former proprietors in the rebellion of 1857. *It was subsequently offered for sale in auction to the highest bidder unconditionally, and the respondent was the purchaser for* 19,000 *rupees. Before the sale was confirmed by the Collector, another person intervened and offered to take it for* 22,000 *rupees, and the property was accordingly made over to him. In a suit for possession by the former purchaser, the appellant contended that the ratification of the Collector was one of the conditions of the sale.*

Held *(affirming the judgment of the Courts below) that the ratification of the sale by the Collector was not one of the conditions of sale in the circumstances of the case; that, even assuming that such a condition attached to the sale, the appellant was bound to show that the refusal by the Collector was for non-observance of some of the express conditions of the sale; that, as the subsequent purchaser was one who purchased with notice of previous sale, the same equity attached against him as against Government; that the suit could not be defended on the ground of an act of State, because it did not relate to the functions of Government; and that in a sale, the Government was exactly in the situation of an individual selling his property, and, when the property was knocked down, the relation of vendor and vendee existed between the Government and the highest bidder.*

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Sheo Lall Bohra *v.* Sheikh Mahomed from the High Court of Judicature, North-Western Provinces, Agra, delivered December 9th, 1869.

Present.

Lord Chelmsford.
Sir James W. Colvile.
Sir Joseph Napier.

Sir Lawrence Peel.

This being a case in which no one has appeared on the part of the respondents, their Lordships have felt it to be their duty most anxiously to consider it, in order to see whether any sufficient grounds existed for the reversal of the judgment. They are unable to come to any other conclusion than that the judgment must be affirmed.

This was a suit for possession by establishment and declaration of right of 1,662 acres in the mehal of Thannah Bhowan, which was property confiscated by the Government in consequence of the participation by the former proprietors in the rebellion of 1857.

It was suggested to the Government that this property might be put up for sale; and Mr. Colvin, who recommended this, proposed, in order to prevent the possibility of any of the rebels or of any of their relatives becoming purchasers, that it should be put up in one entire lot. This suggestion was adopted by the Collector of Moozuffernugger, who, in a letter to the Commissioner of the Meerut Division, said, "Mr. Colvin's note so fully details how "imperfect partition has been made, that "nothing is left for me to explain. All the "confiscated patches have been accurately "defined and formed into one puttee. It has "not been thought necessary to make a regular "butwara or perfect partition, although that "could be done if necessary; for all practical "purposes the separation of the scattered "confiscated parcels is complete, and the whole "can now be put up for sale with the prospect "of some wealthy outsider buying it in. Had "the confiscated patches not been divided off "and then sold, the probability is the relatives "of the rebels would have purchased the lots. "Even now there is a fear of the relations "buying in the property 'ism furzee.' This "will be guarded against as far as I am able."

These extracts from the correspondence are for the purpose of showing that the attention of the Government was at the earliest period called to the propriety or expediency of preventing rebels becoming the purchasers of this property. But the Government did not adopt that view; and, in a letter from the Secretary of the Sudr Board of Revenue to the Secretary of the Government, of the 12th January 1864, the Secretary of the Sudr Board says, "The Board in recommending the "proposal for sale remark that, as the puttee "is intermixed and some of the rights (as in "wells) joint, and the responsibility common "with the other puttees, it will be inexpedient "to place any restriction on the competition "of the resident brotherhood, even though "connected with the ex-proprietors. A stranger "may find it difficult to gain effective posses-"sion, and besides the Government need not "lose the chance of a higher price from unres-"tricted competition."

A sale to this effect was sanctioned by the Lieutenant-Governor. The Under-Secretary to the Government, writing to the Secretary of the Sudr Board on the 16th February 1864,

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says, "The Lieutenant-Governor has been "pleased to sanction the sale of the confiscated "lands . . . as therein detailed."

This was followed by an order of the Revenue Court, dated the 14th March 1864, which directs "that the auction be knocked down to "whoever bids the highest, no attention being "paid as to whether he be a rebel or not;" and then a notice was issued, following upon that order, in these terms:—"Whereas, in accordance "with the sanction of the Commissioner, No. 74, "dated 12th March 1864, conveying the sanction "of the Government, the auction-sale of the pro- "perty situated in the town of Thannah Bho- "wan, in Pergunnah Thannah Bhowan, confis- "cated by Government for rebellion, and as "detailed at foot, will be held on the 20th "April 1864, it is hereby notified that who- "soever may wish to purchase should present "himself at Moozuffernugger and do so. More- "over, that the auction-purchaser will have to "abide by the conditions of the auction, and "that the auction-sale will be knocked down "to whichever party gives the most. No "attention will be paid as to whether the "purchaser is a rebel. Whoever chooses may "purchase."

Of course, that was notice to all the world that anybody, whatever he might be, whether rebel or not, going into that auction-room might become a bidder for, and the purchaser of, this confiscated property. Accordingly, an agent of the respondent appeared in the auction-room and bid for him, and, after considerable competition, was ultimately decided to be the highest bidder, and the lot was knocked down to him upon his bidding of 19,000 rupees.

He then sought to have that sale perfected. He deposited the sum of 2,060 rupees, and desired to complete the purchase, when he was met by an objection that the sale not having been ratified by the Collector another person had come forward who had offered a larger sum, 22,000 rupees, and, therefore, that the sale to the respondent would not be carried out.

The right to refuse to complete the sale is founded on a memorandum at the foot of the statement of the biddings in these terms:— "This auction has been knocked down to Moul- "vie Sheikh Mahomed, the son of Moulvie "Ahmed Oollah, resident of Thannah Bhowan, "through Katim Ally, on the 20th April 1864, "on the condition of its being ratified by the "Collector."

The principal question in this case is whether the ratification of the sale by the Collector was, or could be made, a condition of the sale. It is unfortunate in this case that we have no evidence at all of what the conditions of sale were; but, according to the opinion of the Judge of the District Court and also of the High Court, this, which is sought to be imposed as a condition, was no part of the original conditions of sale.

The Judge of the District Court said, "The "notice declares that the property shall be sold "to the highest bidder, subject to the condi- "tions of sale. What those conditions were "does not exactly appear, but no proof is "adduced that the confirmation of the sale by "higher authority was one of them." And the High Court was of opinion that, "inasmuch as "the Collector, with the sanction of the supe- "rior authorities, made it a distinct condition "of the sale that the property should be sold to "the highest bidder, and that the considera- "tion as to whether he was a rebel or not "should not affect his right to purchase, the "Government were not at liberty, subsequently "to the sale, to disapprove of and annul the "sale on the grounds stated; that the "Government, like any other seller, might "impose whatever conditions it pleased in refer- "ence to property which it offered for sale "*prior* to the sale; but when it had expressly "stated that it would not allow a particular "objection to operate, it was not at liberty "*subsequently* to the sale to impose a condition "on the sale not only *novel*, but *directly* at "*variance* with the terms under which it offered "the property for sale."

Their Lordships apprehend that, looking at the terms of the memorandum, the words "on the condition of its being ratified by the Collector" must be qualified in this manner,— that, supposing the conditions of the sale have not been complied with, then the Collector might refuse to ratify it; but to hold it to have been in the power of the Collector to refuse to ratify the sale because the purchaser was a rebel would be a determination utterly repugnant to the terms and conditions upon which according to the public notice, the sale was to be conducted.

Even assuming, therefore, that the appellant is right with regard to the ratification of the Collector being a condition which attaches upon the sale, he was bound to show that the refusal to ratify the contract was by reason of the non-observance or the non-performance of some express condition of sale.

Under these circumstances the suit is brought virtually for specific performance. In consequence of the contract in the auction-room, an equity arose against the Government, which the party seeks by this suit to enforce.

Now, inasmuch as Sheo Lall pretends or assumes to be the purchaser of this property, it was impossible that such a suit could be instituted without making him a party to it, and he might have shown that he was a purchaser for valuable consideration without notice, and, if that had been the case, he would have been dismissed from the suit. But it appears clearly that he had notice of this purchase by the respondent, because, in a petition which he presented to have his offer accepted and the property conveyed to him,

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he said, "Whereas the auction-sale of the town "of Thannah Bhowan, the property of rebels, "and confiscated by Government, was yesterday "sold for Rupees 19,000, and that as yet the sale "has not been ratified and that the property "will admit of a higher price, I, prior to the "ratification of the former auction, present "this application to the extent of Rupees 22,200, "and solicit that, if the authorities deem it "advisable, the property be bestowed on me "for that sum." He is, therefore, a purchaser with notice, and the same equity attaches against him as against the Government.

It has been said that this suit could not be instituted by the respondent, inasmuch as what was done was an act of State, which could not be called in question. The meaning, as their Lordships understand it, of an act of State is something which appertains to the functions of Government. Suppose, for instance, any question had arisen with regard to the propriety of confiscating the rebels' property, that would have been an act of State. Probably the determination of the Government to sell that confiscated property might also be treated as an act of State, but in the sale the Government was exactly in the situation of an individual selling his property by auction; and, when the property was knocked down, the relation of vendor and vendee existed between the Government and the highest bidder.

It is impossible, therefore, to say that this suit was not properly brought against the Government. It is to be regretted that the Government should have brought itself into the position of having sold to a person who it appears is likely to create some dissatisfaction and provoke hostile feelings in the district.

The Government no doubt acted from the best motives and according to the best judgment they could form as to the most advantageous mode of selling the confiscated property, and their Lordships can only hope that they will be able to protect the subjects in the district from the danger to which they seem to be exposed from the character of the person whom they have permitted to become a purchaser.

Under these circumstances their Lordships can do nothing more than affirm the decree and dismiss the appeal.

OFFICIAL PAPERS.

Enhancement of Salt Duty.

Proceedings of the Madras Government, Revenue Department, 6th February 1868.

Read the following letter from the Secretary to the Board of Revenue, to the Secretary to Government, Revenue Department, Fort St. George, dated Madras, 5th December 1867, No. 7,857:—

I am directed by the Board of Revenue to acknowledge the receipt of the Order of Government, under date 9th September 1867, No. 2,113, communicating to the Board for report a circular from the Secretary to the Government of India, in the Financial Department, dated 27th June 1867, No. 977, requesting that the Government of Madras will take into consideration the existing rate of Salt duty in the Madras territories with reference to the question of raising it to the level of the duty in Bengal or to a more limited extent, and desiring that, in deciding upon the question, the condition of the people, especially of the lower classes and the comparative wages of labour, be duly considered.

2. The salt monopoly was established in the Madras Presidency in 1805, and the price of salt was then fixed at 9 annas and 4 pies per Indian maund of 82⅔ lbs. (or ·17 of a penny per lb.). In 1809 the rate was raised to 14 annas per Indian maund (or ·25 of a penny per lb.), and the sales for home, inland, and foreign consumption immediately fell from lbs. 306,231,223 to lbs. 235,244,983; and though in 1810-11 the sales had reached lbs. 273,172,111, they never again touched lbs. 306,000,000 until 1820-21, when the sale-price was again reduced to 9 annas and 4 pies per Indian maund, and lbs. 396,398,263 were sold. In 1825-26 the sales were upwards of lbs. 419,000,000; but on the price being raised to 14 annas per Indian maund in 1828, the sales again decreased, falling as low as lbs. 293,201,115 in 1832-33, and rarely being in excess of lbs. 350,000,000 up to 1844, when the price was raised to Rupee 1 and Annas 8 per Indian maund. This latter rate was put in force under the orders of the Government of India, when the inland transit duties were abolished, but was strongly protested against by the Madras Government, who were of opinion that "a sudden rise in the monopoly price to the "extent of 10 annas per Indian maund would "have most serious influence on the home and "inland trade, and would be an inducement to the "inhabitants to procure salt illicitly, or to use the "unwholesome earth-salt, which is easily procurable in every district."

3. On receipt of this protest the late Honourable Court of Directors overruled the order of the Supreme Government, and reduced the price at which salt was to be sold from Rupee 1 and Annas 8 per Indian maund to 1 rupee, pointing out that, whenever the price had been raised in former years, a considerable falling off in the consumption had invariably followed, and that the decrease in sales must have been occasioned "either by "the mass of the people restricting their consumption within the narrowest possible limits, or, "what is more probable, by the poorer classes "having recourse for this necessary of life to "illicit sources, or to the manufacture of an unwholesome and inferior salt which may easily "be prepared from the saline earth common in "the country."

4. The increase of price from 14 annas to 1 rupee per Indian maund (or from ·25 of a penny per lb. to ·29 of a penny per lb.) does not seem to have had any marked effect on the consumption, for it steadily increased each year up to 1850-51,

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when it nearly reached lbs. 419,000,000, at which it had stood twenty-five years previously.

5. After a consideration of these statistics the Board can come to no other conclusion than that the old rates of duty on salt had a very serious effect in restricting the consumption of the article, for it is impossible to suppose that from natural causes the consumption of the people should be the same in 1825 and 1850, when the large increase of population which had taken place in the interval is taken into account.

6. The statistics of the last fifteen years are, however, much more re-assuring. The gross quantity of salt sold during the five years between 1851-52 and 1855-56 was on the average upwards of 485 millions of pounds, and the average sales between the latter year and 1860-61 were nearly 540 millions of pounds. In the year 1859 the price of salt was again raised to Rupees 1-2-0 per maund, (·33 of a penny per lb.,) and in 1861 to Rupees 1-6-0 (·40 of a penny per lb.) and Rupee 1-8-0 (·44 of a penny per lb.,) and again, recently in 1866, to Rupees 1-11-0 (·49 of a penny per lb). The gross quantity of the article sold in each year is noted below, from which it would appear that the large increase of taxation which has taken place has not materially affected the consumption, though the sudden increase of price in 1861 had the effect of reducing the sales of the year 1861-62 by upwards of 20 millions of pounds below the average sales of the previous five years:—

Average gross annual sales from	lbs.
1851-52 to 1855-56	485,766,308
Do. from 1856-57 to 1860-61	539,948,818
1861-62	519,416,887
1862-63	544,643,383
1863-64	564,350,811
1864-65	596,795,985
1865-66	664,788,598
1866-67	613,722,733

The reduction was but temporary, however, as the sales of 1862-63 were nearly 5 million pounds in excess of the average sales of the five years ending in 1860-61. Since the latter year there has been a steady increase in the quantity sold each year up to 1864-65, and the increase in 1865-66 was unusually large owing to the quantity exported by sea (on which no duty is paid) having risen from a little over 41 million pounds in 1864-65 to upwards of 112½ million pounds in 1865-66. The falling off in the quantity sold in the past official year 1866-67 was not occasioned by the increase in the price, but was chiefly owing to the export sales having fallen again to 31 million pounds.

7. The average consumption of the population may be approximately arrived at by taking into account only the home and inland sales of salt and excluding the foreign sales, the sales to the French Government, and the sales for exportation over sea. According to this calculation, the consumption of the people was 13½ lbs. per head in 1850-51, whereas the average consumption during the five following years at the same rate of population was 15½ lbs. per head. In 1856-57 the population was found to have increased by nearly a million, and the consumption of that year (on the new rate of population) was only 13 lbs. per head. The average annual consumption of the five years ending in 1860-61 on this rate of population was, however, 15¾ lbs. per head. By the census of 1861-62 the population was found to have again increased by nearly 2 millions, and the consumption in that year, calculated on the new rate of population, was 16 1/5 lbs. per head. In 1862-63 on the same population it was 16 11/12 lbs., and in 1863-64 lbs. 17 1/21. In 1864-65 it was lbs. 118 1/24; in 1865-66, lbs. 19; and in 1866-67 lbs. 19. The census, was taken in May last, and the returns are not yet complete; but supposing the rate of increase to have been the same during the past five years as it was on previous occasions, the population must now be about 26 millions, which would reduce the rate of consumption in 1866-67 to lbs. 18 per head. This rate, however, is a very large increase over the rates of previous years, and is little below the rates of consumption in countries where the article is untaxed, the consumption of salt in England being estimated at 22 lbs. per head, and in France at 19½ lbs. per head.

8. The explanation of this apparent anomaly is that the so-called home and inland sales do not in reality represent the consumption of the home and inland districts of the Presidency, for a very large proportion of the salt finds its way to the Central Provinces and to the territories of Mysore and Hyderabad. By the recent census of the former provinces the population was upwards of 9 millions, and the population of Mysore is certainly upwards of 5 millions, while that of the Hyderabad territories must be nearly double that number, and it may thus perhaps be fairly estimated that about 10 millions of persons resident without the limits of the Madras Presidency obtain their salt supply from the Madras Salt Depôts. Should this estimate be correct, the total consumption of the year 1866-67, being nearly 576 million pounds, would be divided among 36 millions of people, 26 millions of whom are resident within the Madras Presidency, which would give a consumption of 16 lbs. per head. Another mode of estimating the proportion of the salt which is only nominally sold for consumption within the Presidency is to deduct from the "sales for other districts" such quantity as is exported over the frontier; this is well known to be the case in regard to the whole salt sold for other districts, in Ganjam, Vizagapatam, Godavery, Kistna, Nellore, South Canara, and Malabar, and at least one-third of the salt sold for "other districts" at the Madras Salt Depôts is exported to Bangalore and Mysore. On this calculation it will be observed that, of the nominal quantity sold for consumption within the Presidency, 191,160,246 lbs. are exported, leaving only 384,503,205 lbs. for the consumption of the 26 millions of inhabitants, or an annual consumption of only 14 lbs. per head.

	lbs.
Ganjam	66,642,213
Vizagapatam	90,926
Godavery	154,121
Kistna	38,748,260
Nellore	30,676,032
South Canara...	12,970,450
Malabar	7,797,805
Madras	34,080,439
Total...	191,160,246

9. Any calculation of this description, however, whether based on an estimate of the population of the foreign districts supplied or upon the probable quantity of salt nominally sold for inland districts which is exported beyond the frontier, cannot be

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considered very reliable; but supposing that 18 lbs. per head is the lowest rate of consumption which would show that the rates of duty on salt did not act as a prohibition on its consumption, it may be safely asserted that that rate has not yet been generally reached throughout the Madras Presidency, and that, therefore, any proposal to increase the present rate of duty must be approached with great caution, lest it should result in a largely-decreased consumption and lead to a reduced revenue. Abundant evidence has been shown by the fluctuation in the salt sales which took place in the first half of the century that any increase of price had a direct and serious effect on consumption, and though the improved condition of the people owing to reduced assessments, combined with increased prices, has enabled them to bear the recent augmentation of tax without any sensible diminution of consumption, still it is by no means certain that these augmentations have not been the means of *preventing an increase of consumption.* We find that in 1850-51 the consumption, according to the home and inland sales, was 13 lbs. per head, and in 1856-57 was still at the same rate; but between that year and 1860-61 it rose to 15¼ lbs. per head, or increased by seventeen-and-a-half per cent. This was doubtless owing to the improved condition of the people, owing to the liberal policy which was inaugurated in 1853 in regard to the land assessment, and to the rise which had already taken place in the prices of all agricultural produce. As this policy has been steadily continued, and as prices are now double what they were ten years ago, it might be fairly inferred that, had no cause operated to impede the consumption of the full quantity of salt required by the population, the rate of consumption during the six years ending with 1866-67 would have risen by twenty-one per cent., and the rate should now be 18 lbs. per head instead of 14 lbs., or, at the outside, 16 lbs.

10. The condition of the people generally has no doubt greatly improved of late years. No better evidence can be adduced of this than the enormously increased burden of taxation which they now bear. In this improvement the labouring classes have participated, though probably not to the same extent as the other classes of the population. Agricultural labourers are, as a rule, paid in grain, and such wages have not materially increased of late years. Money wages have risen from 50 to 100 per cent., but they are the exception and prevail chiefly in the seaports and places where Europeans reside or transact business. Against the rise in the value of labour must be set off the enormous increase in the price of every commodity, whether a necessary of life or a luxury.

NOTE.—In 1855-56 the gross revenues from land, &c., were £4,683,480, while in 1865-66 they were £6,331,712.

11. On the whole, the Board are of opinion that, while the condition of the poorer classes has improved and is improving year by year, it would be very impolitic and hazardous to increase taxes which, like the Salt-tax, fall with peculiar severity, relatively, on them. As already observed, up to 1859-60 the price of salt was Rupee 1 per Indian maund; in that year it was raised to Rupees 1-2-0; in 1861 it was increased first to Rupees 1-6-0 and then to Rupees 1-8-0; and in 1866 it was raised to Rupees 1-11-0. Thus within the last ten years the price of salt has been raised sixty per cent., and the salt revenue, which in 1855-56 was Rupees 54,14,000, was Rupees 101,27,000 in 1865-66. It thus appears that taxation has kept pace with the increased prosperity of the people.

12. The Board do not hesitate to say that any attempt to assimilate the rate in Madras to that in Bengal would be ruinous, and would be most unjust, as ignoring the vastly heavier incidence of the land-tax in this Presidency. Salt also is an absolute necessary of life, and humanity dictates the imposition of the lowest tax on it, which the necessities of the State will permit. The present rate of duty is from *twelve to fourteen hundred per cent.* on the cost of production, and, though it may be true that the duty represents the value of only a few days' labour in the year, it must be remembered that the cost of the article is enormously enhanced to the consumer by the expense of carriage from the coast, where alone it is procurable. The railways now open only affect a few districts and elsewhere, though the communications are being improved as fast as the limited means of Government permit, their condition over a large portion of the country is still a reproach to our administration.

13. The consumption of salt during the last sixty years has only about doubled, but in that interval the number of consumers from the ordinary increase of the population and the opening of fresh markets for the article has undoubtedly hardly done less. In the interval, however, the salt revenue has increased nearly six-fold. These figures seem to the Board conclusive as to the impolicy of raising the Salt-tax; they show, in fact, that it is now on the verge of the limit repressive of consumption. The effect which the Bengal rate of duty, if imposed here, would have, has been practically demonstrated in Ganjam. The late Collector of that district in his letter, dated 13th April 1866, No. 443, which was submitted to Government with the Board's Proceedings dated 26th June 1866, No. 4,347, showed that in the year 1863-64, when an enhancement of the duty had led to a decrease of lbs. 4,772,000 in the Cuttack salt sales, the quantity sold in Ganjam for the provinces where this reduction of consumption had occurred was augmented in that and the following year by lbs. 9,182,674, so that the population affected by these transactions consumed far more largely than before, and a clear gain of Rupees 44,400 accrued to the General Revenue. It should be borne in mind, in noting these remarkable results, that the decisive effect of an enhancement of price in these quarters of the empire is attributable to the enormous cost at which salt is carried from the coast to the Central Provinces, which leaves so narrow a margin for profit that even a slight increase of price becomes a matter of importance. A cart-road from the Ganjam pans has been completed to the limits of the district on the borders of Boad, and in the direct line from Sumbulpore, but no steps have been taken, the Board believe, to continue it beyond the limits of this Presidency.

14. In conclusion, I am to observe that it appears to the Board to be very questionable whether the Madras Presidency can fairly be looked to for an augmentation of the Imperial finances. The Board believe that the people of this Presidency are now more highly taxed than those of other parts of India. The Board have not before

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them the Imperial statistics of recent years, but they find that in 1859-60 the area of the presidencies and provinces under British administration was about a million square miles and the population about 140 millions, and in the same year the gross revenues derived from land, salt, and abkarry were respectively about 19 millions, 3 millions, and 1½ millions sterling. Thus throughout India each square mile paid, on the average, £19 as land revenue, and the taxation of the whole population was about 2*s.* 3*d.* per head for land revenue, 5*d.* per head for salt, and about 2¼*d.* per head for abkarry. In the same year the Madras Presidency was about 130,000 square miles in extent, the land revenue and the abkarry and salt taxes (for consumption within the presidency) produced respectively about 4 millions sterling, £300,000, and £500,000. The population was about 23 millions. Thus for each square mile of area about £31 was paid as land revenue on the average, and the population paid about 3*s.* 6*d.* per head as land revenue, 3¼*d.* as abkarry tax, and 5¼*d.* per head as salt tax. It will thus be seen that in 1859-60 the people of Madras were more highly taxed than those of many other administrations, and since that date the public burdens have been very seriously augmented in this presidency by the various enactments authorizing local taxation for certain local charges. The Board hope, therefore, that before proposing any exceptional alteration in the present taxation of the Madras Presidency for the benefit of the Imperial finances, it will be clearly ascertained that no other administration is so well able to make a special contribution for this purpose. The Board trust, however, that the recent determination* to reimpose the income tax will render it altogether unnecessary to interfere with the existing rate of taxation upon salt in Madras.

* See Memorandum by Mr. Massey, attached to the letter from the Secretary to the Government of India to this Government, dated 19th September 1867, No. 2,823.

Order thereon, 6th February 1868, No. 337.

The Government concur in the opinion expressed by the Board that any increase in the Government-selling price for salt is to be deprecated even in the interests of the State finances. They observe that, in addition to the arguments stated by the Board, a very strong one may be deduced from the extent of the sea-board of this Presidency, and the immense facilities thereby afforded for illicit manufacture, which can only be effectually checked, except at a most disproportionate expenditure of money, by keeping the Government monopoly price at a moderate level, and so reducing the margin for illicit gains below what will cover the risk involved.

2. The letter from the Government of India will be answered in accordance with the above views.

(True Extract.)
(Signed) W. HUDLESTON,
Secretary to Government.

REVENUE DEPARTMENT,
FORT SAINT GEORGE,
6th February 1868.

No. 338.

No. 122.

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
Financial Department.

SIR,—I am directed to reply to your circular letter, dated 27th June 1867, No. 977, referring for consideration the question whether it is advisable to raise the Government price of salt in Madras to the level of the duty in Bengal, and requesting that the grounds for any adverse opinion may be fully stated.

2. In the comparative statement of existing rates of duty, given in paragraph 4 of your letter, that prevailing in Madras is entered as Rupees 1-8-0 per Indian maund, and the same for Bombay.

3. The Government-selling price for salt in this Presidency is Rupees 1-11-0 per Indian maund, to which it was raised from Rupees 1-8-0 by Act XIX of 1866, the object, it is inferred, being to make the "*duty*" the same as in Bombay under the excise system of taxing private manufacture, the cost price of the salt manufactured *here* for Government being between 2 and 3 annas a maund including all charges, so that

Selling price.		Cost price.		Duty.
Rupees 1-11-0	*minus*	Rupees 0-3-0	=	Rupees 1-8-0.

4. The question now raised was referred for the opinion of the Board of Revenue, whose reply is forwarded for the information of His Excellency the Governor-General in Council.

5. The Board come to a decided conclusion as to the impolicy of raising the duty, arguing that the facts adduced show that it is already on the verge of the limit which is *repressive of consumption.*

6. They show that in 1859-60, which is the latest year for which they have the necessary statistics, the rate of the salt tax per head of population was in this Presidency 5¼*d.*, while it was only 5*d.* on the average of all India.

7. They also show from recorded facts that in past years any increase of price had a direct and serious effect on consumption, and that, although both consumption and revenue have advanced notwithstanding an increase in the duty, it is more than doubtful whether *the rate of advance* has not been checked by the higher selling price.

8. In 1850-51, the sales for "home and inland" consumption were at the rate of 13 lbs. per head of the population. In 1856-57 it was at the same rate, the price in both years being Rupee 1 per maund. By 1860-61 it had risen to 15¾ lbs. per head notwithstanding that the price had been increased to Rupees 1-2-0.

9. But in 1861 the price was raised first to Rupees 1-6-0 and then to Rupees 1-8-0, and, in 1866, as above stated, to Rupees 1-11-0, and the result is that in 1866-67 the "home and inland" sales had fallen to the rate of only 14 lbs. per head of population, notwithstanding that circumstances generally were in favour of a continued advance from the extension of railways, improvement of roads, and high prices obtained for produce. The latest comparative statements of

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revenue show that there is a considerable falling off* in the salt revenue of the current fusly, as compared with the preceding one down to the same date.

* Rupees 3,70,430 to 31st December 1867.

10. These are very significant facts, and the Board adduce the evidence obtained from the increased sales and revenue in Ganjam when the duty was raised in Cuttack and the demand was consequently transferred to the cheaper market, as proving that the public finances actually benefitted by the cheap salt superseding the dearer article.

11. There is an additional argument against increase of duty in this Presidency derived from its extensive sea-board, and the enormous facilities thereby afforded for illicit manufacture, to which the Board do not allude.

12. This Presidency has at least 1,000 miles of coast, embracing numerous localities offering every possible facility for making salt surreptitiously in small quantities by solar evaporation, without the possibility of Government preventing it except at an immensely disproportionate cost in money, (to say nothing of the demoralization of the people by organized smuggling,) unless the Government remove the inducement by making the illicit gain inadequate to cover the risk. They can only do this by keeping their own selling price moderate.

13. I am directed to state that this Government entirely concur in the view expressed by the Board of Revenue. They are not prepared to say that a small increase in price would at once reduce consumption, or might not benefit the revenues immediately in some measure; but they are satisfied that the *rate of progress* now existing would be still more injuriously affected than it has already been, and that the ultimate effect would be disadvantageous to the finances of the country. In fact, they deem it well deserving of consideration whether a *reduction* in the Bengal rate would not probably be a far more beneficial measure for the Imperial finances than an increase in the Madras rate, to say nothing of the vast difference in the effect that would be produced on the people.

14. Salt is a necessary of life everywhere, but it is far more essentially so in a country where the bulk of the people live mainly on a vegetable diet, and yet it appears that at present in Madras, notwithstanding its lower rate of duty than Bengal, the quantity consumed per head of population is only about two-thirds of the average consumption in England.

15. This Government entertain a very strong feeling as to the political morality of taxing such an easily and widely produced necessary of life as salt. They consider that the measure can only be justified by proving that the benefits secured to the tax-payers by the revenue derived from the tax far more than counterbalance the burden imposed on the community, and from this point of view the first consideration should be whether a reduction in the higher rates of duty would not tend to increase consumption to an extent that would sensibly promote the health and comfort of the people without seriously reducing the revenue and embarrassing the finances.

16. But even if doubt be entertained whether, under the Bengal system, the community generally or only the importers would benefit by a reduction of duty, there can be no doubt that under the monopoly system in force in this Presidency any increase in the Government-selling price immediately produces and affords a *primâ facie* reasonable ground for a far larger increase in the retail price by the wholesale purchasers from Government, thus tending to check consumption; and even in the interests of the finances only, this Government have no hesitation in deprecating the suggested measure.

I have the honour to be,
Sir,
Your most obedient servant,
(Signed) W. HUDLESTON,
Secretary to Government.

Memorandum by the Acting Revenue Secretary on the proposed increase of the Salt Duty.

In reply to the query of Government whether the duty on salt might not be slightly enhanced without diminishing consumption or interfering with the natural increase of consumption, the Board of Revenue adhere to their former opinion that, though the recent increases of the salt duty had not sensibly diminished the consumption of salt, they had possibly prevented an increase of consumption; that the present salt tax is on the verge of the limit repressive of consumption; and that, therefore, it is hazardous and impolitic to raise the duty.

2. The Board submit the opinion of several Collectors of districts on the subject, the great majority of whom are of a different opinion from the Board, thinking that an increase of the price from Rupees 1-11-0 per maund to Rupees 2 per maund would not in any way affect consumption, and would not limit the natural increase of consumption incident to an increase of population. Mr. Minchin and other officers point to improved communication having already, *in fact*, reduced the price of salt to the great bulk of consumers, and express their opinion that the annual advance which is made in this direction in all parts of the country will insure no loss to the general body of consumers by a small increase of price.

3. At the same time it must be borne in mind that the home consumption of salt in the Madras Presidency is not as high as it ought to be, and there is very little doubt that in all coast districts where smuggling is easy and difficult of detection, a large quantity of smuggled salt is annually consumed. An increase in the duty will render this practice still more general in these localities, and, were the question a local one only, it would be very questionable policy to increase the rate of salt duty. Indeed, in the present state of consumption, it is doubtful whether a reduction in the duty would not, as in other countries, lead to a largely increased consumption and an increased revenue. This has been the invariable effect, it is believed, of every reduction of taxation on necessaries in Great Britain. Between 1840 and 1844, when the sugar duty was 25*s.* per cwt., the average consumption was 16 lbs. 5 oz. per head and the average revenue under 5 millions; whereas between 1855 and 1859, when the duty was 14*s.* per cwt., the average consumption was 31 lbs. per head and the average revenue was nearly 8 millions. Similar results followed the reduction of taxation on tea and coffee. Between 1850 and 1854, when the duty on tea was 2*s.* per lb., the average consumption was 2 lbs.

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per head and the average revenue 5½ millions. In 1860 and 1864 the consumption was raised to 3 lbs. per head and the revenue to 6 millions, the duty having been reduced to 1*s*. per lb.

4. Looking at the question as an Imperial one, however, and bearing in mind the evils which must result from the oppressive duties on salt in the northern parts of India, an increase of the Madras price to 2 rupees per maund may well be sanctioned if it will *insure* the reduction of the duty in Northern India to that amount. An increase of the rate in Madras will doubtless give an increase of revenue, and will partially make up for any possible loss in the north; but, once the duty has been assimilated all over India, the consumption of each province should be watched with the greatest care and tentative reductions of duty might be tried, which would involve but little loss if unsuccessful until that rate is arrived at which pays best with the maximum of consumption.

5. From a local point of view the arguments brought forward by the Board against any increase in the taxation of the Presidency are of much weight, for undoubtedly the burden of taxation is heavier in Madras than in other parts of India. The Board showed in their former letter that the land revenue throughout India was 2*s*. 3*d*. per head and £19 per square mile, whereas in Madras it was 3*s*. 6*d*. per head and £31 per square mile. Abkarry and salt throughout the empire were 2½*d*. and 5½*d*. per head, whereas they were 3¼*d*. and 5½*d*. in Madras.

(Signed) R. A. DALYELL,
Acting Secretary to Government.

12*th May* 1869.

MINUTE BY THE HONOURABLE H. D. PHILLIPS.

If we accept the views of the greater number of Collectors who have been consulted since the date of receipt of the confidential communication of the Duke of Argyll to Lord Napier, there would seem to be no probable danger to the salt revenue from a slight increase of duty on that article. But some of the most intelligent and reliable of these functionaries hold a different opinion, and are averse to any addition to the tax at present levied on it. The three Members of the Revenue Board, as shown in their separate Minutes, agree with the four Collectors who form the minority of the Collectors whose opinions are before us. The official report from the Board of Revenue, based on the Members' Minutes is, therefore, now, as it was before in their elaborate report, recorded in our Proceedings, dated 6th February of last year, decidedly against another increase of duty, which they regard as an undesirable and an imprudent step. I may note that the Third Member of the Board of the present time was not in the Board in February 1858, so that we have four of the senior and most experienced Revenue Officers of the service averse to a measure which would again raise the tax on salt. In submitting to the Government of India the Board's report to which I refer, this Government expressed their entire concurrence in the views which it expressed, and seem to have considered the Board's reasoning so full and convincing that little or nothing was added o it. So far as I am personally concerned, I still regard the Board's exposition of the subject as correct; nothing has occurred intermediately to alter the ground on which it was based, and I, therefore, think this Government should adhere to the concurrence with the Board which they expressed in the early part of the past year.

2. There appear to me to have been a sufficient number of increases in the tax on salt, and I would, therefore, now leave at rest for a period what seems an assured source of gradually increasing revenue.

		RS.	A.	P.
Its monopoly price from 1844-45 to 1858-59 was per Indian maund	...	1	0	0
In August 1859 it was raised to ...	...	1	2	0
In April 1861 do. ...	...	1	6	0
In June 1861 do. ...	...	1	8	0
In March 1866 do. ...	...	1	11	0

That is to say, in nine years the price has been raised 70 per cent. It may fairly enough be held that in the past fifteen years the country has made great progress, and that generally the condition and circumstances of the lower classes have improved; but we know that the actual rate of consumption of salt in the entire Presidency is still not more than 14 or 15 lbs. per head of the population, or several pounds below what the rate ought to be, if not depressed and checked by the imposition of the existing tax of Rupees 1-11-0. Any fresh addition will, I apprehend, still further impede consumption, and cannot fail to throw back what even now, under existing impediments, is a magnificent item of revenue. We ought, I consider, to be very cautious in dealing with changes when we find that in fifteen years, from Fusly 1263, when high prices and the change in the circumstances of the country commenced, the salt revenue has risen from 36 to upwards of 100 lacs of rupees. Will it not be better, instead of running the risk of killing the goose that lays the golden egg, to rest satisfied with the probable increase which, in the natural course of things, must result from the gradual further improvement in the resources of the country?

(Signed) H. D. PHILLIPS.

17*th May* 1869.

MINUTE BY HIS EXCELLENCY THE PRESIDENT.

It may fairly be affirmed that this Presidency gives more and receives less than any other part of India. The land assessment is much heavier than it is in Bengal, Bombay, and other portions of the country. The cesses for local purposes are equal to any, and higher than most. On the other hand, the grants from the Imperial Exchequer are less liberal than they are in other provinces where the backward condition of society or the prosecution of works of general importance justify an exceptional generosity on the part of the State. As a partial compensation to the people of Madras for the disadvantages imposed on them, the monopoly price of salt, though raised nearly 75 per cent. during the last decade, is still maintained at a moderate amount if compared with the excessive charges in Central India, the North-West Provinces, and Bengal.

2. Under these circumstances, if the present proposal to raise the monopoly price of salt was merely prompted by the desire to exact an augmentation of Imperial revenue, I would deprecate it as unjust to the people of Madras, who bear

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already at least a fair proportion of the public burdens.

3. The measure now suggested has, however, a very different character. It is a proposal to assimilate the price of salt all over the British territories with a view—(1), to the relief of the great majority of the general population who are now affected by the higher price of this necessary of life; (2), to the abrogation of the preventive lines which now intersect the country, the maintenance of which is expensive, vexatious, and prejudicial to the general freedom of traffic. The Government of this Presidency is not asked to make a sacrifice for a revenue interest merely; it is asked to make a sacrifice for the welfare of the greater number of Her Majesty's subjects and for the general good of trade.

4. The reduction of the duty on salt in the provinces subject to the higher rates cannot be effected without a temporary sacrifice of revenue, and the Supreme Government are not prepared to incur a sacrifice of revenue. The deficit contingent on the reduction of the salt duty must be covered, or, at least, reduced. This result can be attained by the imposition of a new tax or the increase of an old one affecting the whole country only the increase of the duty on salt, or the price of salt, in the provinces subject to the lower rates. In my humble judgment, a temporary increase in the price of salt would in this Presidency be less felt and less resented than the introduction or aggravation of any other impost.

5. Should the Government of Madras be disposed to adopt the opinion here submitted, it is obvious that the step taken ought to be bold, in order that it may be transitory. By coming frankly to the assistance of the Supreme Government and the general revenue, the reduction of price in the provinces affected by the higher duty can be made prompt, decided, and universal. In this way the reaction would be immediate and satisfactory. A rapid expansion of consumption would occur over the immense area to which relief would be afforded; an increasing revenue would empower the Supreme Government to retrace its steps and to sanction, even on financial grounds, a general diminution of duty which would bring back the price of salt over the whole of India to the level at which it now stands in this Presidency. The question for solution is how far can we go without materially restricting consumption and giving a dangerous impetus to illicit fabrication.

6. The balance of opinion in the papers now before us countenances the impression that an increase of 5 annas per maund, which would raise the price from Rupees 1-11-0 to Rupees 2, would not seriously affect the purchase-power of the consumers, who, under such a system, if compelled to restrict their expenditure, would limit their outlay on other commodities rather than restrict it with reference to salt. I do not think that this result can be predicted with any absolute security. The last increase of price in 1866 was followed by a diminution of consumption, though not by a decrease of revenue. The diminution of consumption may be accounted for by the excessive dryness of the recent seasons and the consequent impoverishment of the population. We are not secured against the recurrence of similar calamities. It appears probable to me that, with a good rainfall and a full crop, the people could maintain their present rate of consumption in the face of an increased price. They could not do it with a dearth. There is undoubtedly a risk, but it is a risk we may incur for the object which the Secretary of State has set before us.

7. Taking, then, a sanguine view of the subject, assuming that the present rate of consumption can be maintained in prosperous seasons and that the seasons will be prosperous, to what amount of revenue would a price of Rupees 2 per maund enable us to throw into the Imperial Exchequer for the purpose of mitigating the temporary deficit which would certainly be caused by a reduction of the duty in the north? The average revenue derived from the sale of salt in this Presidency during the years 1866-67, 1867-68, and 1868-69 has been Rupees 1,11,52,550; the selling price being Rupees 1-11-0 per maund. If the quantity sold should remain the same and the selling price be raised to Rupees 2, the amount of revenue obtained would be Rupees 1,32,17,837, an advance of upwards of 20 lacs. That is the most we can promise to the Supreme Government. An advance beyond Rupees 2 per maund would certainly result in a diminution of consumption.

8. The salt revenue of Bombay is about one-half of the salt revenue of Madras. I am not enabled to state whether an increase of duty would necessarily imply a diminution of consumption; but assuming that it would not, and that the increase of duty imposed in that Presidency was commensurate with the increase of the monopoly selling price here, an advance of revenue of about 10 lacs might be realized.

9. Such an increase of the price of salt in the provinces subject to the lower rates as might be supported without a diminution of consumption would, according to the preceding argument, place the sum of 30 lacs in the hands of the Supreme Government to meet the apprehended loss of revenue in the less favoured provinces in which the salt revenue may be estimated at upwards of 400 lacs. The compensation afforded by Madras and Bombay would, of course, be swelled by the amount of revenue derived from the increased quantity sold in the less favoured provinces under a lower rate of duty—an amount which I am not enabled to estimate, but which would no doubt be considerable even at the outset.

10. It is for the Secretary of State and the Supreme Government to judge whether, with such a perspective of support, they can enter upon the contemplated measure of general assimilation. As far as we are concerned, I would advise that a letter be addressed to the Secretary of State to the effect that this Government are disposed to raise the monopoly price of salt to Rupees 2 per maund on the distinct understanding—(1), that a similar sacrifice is imposed upon all the provinces affected by the lower duty; and (2), that the change is adopted in connection with an assimilation of the price of the commodity all over the British territories, for under such a measure such an increase of consumption may be eventually expected as will enable the Supreme Government at no distant date to revert with advantage to the revenue to the lower price now existing in the favoured provinces.

(Signed) **NAPIER.**

MADRAS, *May 28th*, 1869.

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MINUTE BY THE HONOURABLE A. J. ARBUTHNOT.

We are called upon to determine whether it is possible, consistently with the interests of the Imperial revenue and with a due regard to the requirements of the poorest classes of the community, to raise the price at which, under the Government monopoly, salt is sold in this Presidency, and which at present stands at Rupees 1-11-0 per Indian maund; and, if so, to what extent the price may safely be increased.

2. The object with which it is proposed that the price of salt in this Presidency and in Bombay shall if possible be raised is, that the Supreme Government may be enabled, without incurring any considerable sacrifice of revenue, to reduce the high price charged for this necessary of life in the northern provinces of India.

3. In the papers before us there is considerable difference of opinion as to the advisability of any increase to the present price. The Members of the Board of Revenue are all opposed to it; one of them, however, (Mr. W. Robinson,) basing his opposition not on the ground that a moderate addition to the present price would diminish consumption, or seriously hinder its gradual and natural increase, but on the ground that the people of this Presidency are more heavily* taxed in proportion to the population than those of any other Indian Province, and that any increase to that taxation would be unfair. Of the Collectors who have been consulted, the majority see no objection to increasing the monopoly price up to 2 rupees a maund, and this opinion is shared by a Madras Firm, Messrs. Cammiade, Martin and Co, who deal largely in salt, and who are directly interested in preventing any such enhancement of the monopoly price as would tend to reduce consumption and consequently to reduce the profits which they derive from the trade in salt. These gentlemen assert that, "if an increase in the revenue becomes indispensable for the better management of the government of the country, the rate of excise duty† fixed on salt may be raised to Rupees 2 or Rupees 2-4-0 per Indian maund without incurring the risk of reducing consumption." Such an opinion, emanating from traders practically interested in developing the consumption of the article, affords strong support to the views of those officers who are favourable to an enhancement of the present monopoly price. Short of actual experiment there could hardly be a better test of the propriety of the measure than the favourable opinion of persons so obviously interested in maintaining and increasing the consumption.

* NOTE.—The validity of this reasoning appears to me to be very questionable, inasmuch as a very large proportion of the only class of persons upon whom the salt tax can be at all burdensome are those who do not contribute in any other shape to the taxation of the country.
A. J. A.

† NOTE.—They doubtless mean the monopoly price. The excise system has not as yet been introduced into this Presidency.
A. J. A.

4. At the same time it must be admitted that any mere estimate or opinion is liable to prove erroneous, and that some of the most experienced and some of the ablest officers in the Revenue service agree in considering that the salt tax is now on the verge of the limit repressive of consumption, and that it would be hazardous and impolitic to raise it.

5. Questions, moreover, which lie at the root of he whole matter, and the settlement of which is to enable us to arrive at any really satisfactory conclusions as to the possibility of raising the tax without unduly restricting consumption, are still involved in uncertainty. It is not by any means a settled point what ought to be the consumption of salt per head by the people of this country, nor are there data for arriving at anything approaching to an accurate estimate of the actual consumption per head in this Presidency.

6. The first question is gone into at some length in Mr. Plowden's Salt Report. At the time that report was written the Madras Board of Revenue estimated 18 lbs. per head per annum as the average quantity that would be consumed if price were not a hindrance; but this Mr. Plowden considered* to be "much beyond a necessary quantity for a full-grown man." "6 seers or 12 lbs. a head," he observes, "has usually been considered a full "allowance. Sir Thomas Munro's highest estimate, it has been seen, gives less than 9 lbs., and "in the Bombay jails 7 lbs. is found to be a sufficient allowance."

* See report, paragraph 697.

7. Mr. Walter Elliot, the Commissioner of the Northern Circars, who made careful inquiries on the subject, came to the conclusion that 7 seers or 14 lbs. was a fair allowance. On the other hand, Mr. Davis, a former Collector of South Arcot, who is said to have given a good deal of attention to the question, estimated the minimum quantity for an adult at 25 lbs. per annum. And more recently, Dr. Cornish, in his Memorandum on the nature of the food of the inhabitants of Southern India and on Prison Dietaries, "estimates the quantity of salt required at from three-fourths of an ounce to 1 ounce per head per diem, or from 17 to nearly 23 lbs. per annum." Dr. Cornish says that "it has been shown by physiological experimenters "that at least half an ounce of salt passes away "in the urine every day, and nearly the same quantity by the skin and the fæces; and that to replenish this constant and daily waste, and to supply "the body with an ingredient so essential to it, the "least quantity which should be provided is from "three-fourths of an ounce to 1 ounce." At the present time 1 ounce of salt forms a part of the daily diet of each prisoner in every jail in this Presidency; but I am aware* that the Inspector-General of Jails considers the above allowance excessive.

*NOTE.—Since the above was written I have been informed by the Superintendent of the Central Jail at Coimbatore that on the average about one-eighth of the daily allowance of salt is returned into store in that jail.
A. J. A.

8. The other question of what is the actual consumption of illicit salt per head per annum is equally involved in doubt. It cannot be said that as yet we have an accurate census of the population, nor are there any trustworthy data for arriving at an estimate of the proportion of the total quan-

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tity of salt sold, which is consumed within the limits of the Presidency. The Board of Revenue give a rough estimate in their letter of the 5th December 1867, but admit that it is not very reliable.

9. It follows that the only data upon which any reliance can be placed are the gross sales of salt for home and inland consumption, and from the annexed abstract of the returns for the last ten years it is evident that the additions which have been made to the monopoly price during that period have not been followed by any considerable, certainly not by any permanent, diminution of consumption:—

ABSTRACT of Salt Sales for *Home* and *Inland* consumption for the last ten Fuslies.

Fuslies.	Years.	Sales.
1269	1859-60	475,711,076
1270	1860-61	506,149,384
1271	1861-62	484,440,686
1272	1862-63	511,611,676
1273	1863-64	526,156,087
1274	1864-65	550,371,044
1275	1865-66	549,169,426
1276	1866-67	575,663,451
1277	1867-68	528,921,818
1278	1868-69	556,413,782

NOTE.—Fusly 1269 corresponds with the yea ending on the 30th June 1860.

In April 1861 the price was raised from Rupees 1-2-0 to Rupees 1-6-0, and again in June of the same year to Rupees 1-8-0 per Indian maund. In the following year (Fusly 1271, corresponding with the year ending on the 30th June 1862) the consumption fell from 506,149,384 lbs. to 484,440,686 lbs., but in the next year it rose to 511,611,676. In March 1866 the price was raised to Rupees 1-11-0, the present monopoly price, and, notwithstanding this increase of price, the consumption of the following year (Fusly 1276, corresponding with the year ending on the 30th June 1867) was higher than that of any year of the period, amounting to 575,663,451 lbs. In the next year (Fusly 1277) the consumption fell to 528,921,818 lbs., owing doubtless to the badness of the season, which necessitated the construction of famine works and the opening of relief houses in several districts, and caused a severe pressure on the poorest classes. Last year, however, the consumption had again risen to 556,413,782 lbs. These facts, taken in connection with the annually increasing facilities for the carriage of salt inland, afford, I think, fair grounds for assuming that a moderate percentage may be added to the selling price without hindering the natural increase of consumption.

10. The course which on full consideration I would advocate is that we should propose to the Government of India to raise the monopoly price at once to Rupees 1-14-0 a maund, at the same time intimating that, in the event of this increase not being attended with a falling off in the consumption, we shall be prepared at the close of the ensuing Official year to recommend a further increase of 2 annas a maund with a view to the equalization of the tax throughout India.

11. I consider this tentative measure to be preferable, under all the circumstances of the case, to an immediate increase of 5 annas a maund, involving an additional percentage of 18½ to the present monopoly price.

(Signed) A. J. ARBUTHNOT.

2nd September 1869.

REVENUE DEPARTMENT,
FORT SAINT GEORGE,
17th September 1869.

No. 2,592.

No. 264.

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
Home Department.

SIR,—I am directed to report, for the information of His Excellency the Viceroy and Governor-General in Council, that His Grace the Secretary of State for India furnished the Right Honourable the Governor of Madras with a copy of his despatch to the Government of India, under date 21st January 1869, No. 2, relative to a reduction of the duty on salt in Upper India concurrently with an increase of the rate now paid in the Presidencies of Madras and Bombay.

2. Lord Napier communicated the despatch to this Government, and I am directed to submit the correspondence which has passed on the subject with the Board of Revenue and certain of the District Officers, together with the Minutes of the several Members of Government. You will observe that this Government, with a view to the exceptionally high assessment on land in this Presidency and the interest of a numerous class of small holders, numbering with their families perhaps five millions of souls, would deprecate a permanent increase on the price of salt as a simple expedient for raising a higher revenue. If, however, a general measure for the equalization of the price of salt throughout India and for a uniformity of system is under contemplation—a measure which would probably result in such an augmentation of consumption in the highly taxed provinces, as to afford the prospect of a general reduction of price at no distant date—this Government would not feel justified in withholding their co-operation.

3. They would be prepared to recommend that the price of salt in this Presidency should be increased by 3 annas per Indian maund at first, and, if this expedient is not attended with a serious diminution of consumption, which they do not anticipate, they would subsequently add 2 annas more, making the Government price of salt Rupees 2 per maund, the rate to which it is presumed the price would be reduced in the highly taxed provinces.

4. Considering the deficiency of the Imperial revenue already reported and the further loss which may be anticipated in the present year in consequence of the distress prevailing in many parts of the empire, this Government would, moreover, be willing to anticipate the preparation of a general measure for the reform of the salt system, and to raise the price of salt in this Presidency at once from Rupees 1-11-0 to Rupees

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1-14-0, a measure which, unless the consumption should diminish, would place about twelve lacs of rupees per annum, of which six will be available in the present financial year at the disposal of the Imperial Government.

5. This Government believe that this experiment may now be made with every prospect of success in consequence of the prosperous season with which the South of India is favoured; and they consider it their duty to make some sacrifice to the general good, when it can probably be done without inflicting a decided local hardship. They would, therefore, suggest than an Act be immediately passed raising the price of salt to Rupees 1-14-0 per maund, and that intimation of the same be given to this Government by telegraph in order to prevent speculative purchases while the measure is under contemplation.

6. This Government are happy to be able to add that the general prospects of the revenue are favourable, and that it is not improbable that an aggregate increase of nine lacs may be realized, which, in conjunctien with six lacs from salt, would make a gross increase of fifteen lacs above the estimated revenue of the year for the Madras Presidency.

I have the honour to be,
Sir,
Your most obedient servant,
(Signed) R. A. DALYELL,
Acting Secretary to Government.

Order, 18th September 1869, No, 2,608-A.

Resolved that the following telegram be despatched to the Financial Secretary to the Government of India, Simla:—

" Viceroy's telegram of sixteenth received. Madras Government cannot approve greater incr ease of Salt duty than 5 annas per maund, thus raising the price to 2 rupees. More would diminish consumption, perhaps even revenue."

(True Extract.)
(Signed) R. A. DALYELL,
Acting Secretary to Government.

REPORT OF THE SELECT COMMITTEE ON THE COURT FEES' BILL.

We, the undersigned, the Members of the Select Committee of the Council of the Governor-General of India for the purpose of making Laws and Regulations to which the Bill to provide for the better regulation of Court fees was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

From Junior Secretary to Chief Commissioner, Oudh, No. 47, dated 7th January 1869, and enclosures.

From Secretary to Government, Financial Department, No. 3,958, dated 7th October 1869.

From Secretary to Government, Punjab, to Secretary, Foreign Department, No. [illegible], dated 25th August 1869, with enclosures, and Resolution, Foreign Department, No. 409, dated 14th October [illegible].

From Chief Secretary to Government, Madras, No. 4,677, dated 29th October 1869, and enclosure.

From Honourable Mr. Justice Turner, High Court, North-Western Provinces, dated 22nd October 1869.

From Secretary to Government, Bengal, No. 6,329, dated 3rd December 1869, and enclosures.

From Secretary to Chief Commissioner, Central Provinces, No. [illegible], dated 4th December 1869.

From Chief Secretary to Government, Madras, No. 1,909, dated 2nd December 1869, and enclosure.

From Secretary to Government, Punjab, No. 1,714, dated 6th December 1869, and enclosures.

From Secretary to Government, Bengal, No. 6,507, dated 14th December 1869, and enclosures.

Memorial from the British Indian Association, dated 16th December 1869.

From Registrar, High Court, No. 434, dated 16th December 1869, and enclosure.

From Officiating Registrar, High Court, North-Western Provinces, No. 1,989, dated 16th December 1869, and enclosure.

From Secretary to Government, Bombay, No. 4,499, dated 18th December 1869, and enclosure.

From Chief Secretary to Government, Madras, No. 1,978, dated 14th December 1869, and enclosures.

From Secretary to Government, Public Works Department, Madras, No. 4,007, dated 22nd December 1869.

From Chief Engineer, Irrigation Works, and Joint Secretary to Government, Punjab, Public Works Department, No. 4,4451, dated 18th December 1869.

From Secretary to Government, North-Western Provinces, No. 166A, dated 30th December 1869.

Telegram from Chief Secretary to Government, Bombay No. 5,753, dated 25th December 1869.

From Officiating Secretary to Chief Commissioner, Oudh, No. 5,881, dated 30th December 1869.

From Honourable Mr. Justice

The principal amendments which we have made in the Bill are as follows:—

Acting on a suggestion from the High Court of the North - Western Provinces, we have provided (Section 7) separate rules for the valuation of suits relating to interests in land, but which do not seek its actual possession.

We have also expressly provided in Section 7, and in Schedule II, No. 15, for the following suits:—To enforce the right to share in property on the ground that it is joint-family property: to obtain a declaratory decree or order: to obtain an injunction: for rights to easements and for accounts: to enforce rights of pre-emption: to alter and set aside summary decisions and orders of the Civil Courts (not established by Letters Patent) & Revenue Courts; and for specific performance of contracts.

We have empowered (Section 13) the Courts in their discretion to refund fees paid on applications for review

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Turner, High Court, North-Western Provinces, dated 29th November 1869.
Memorandum by Honourable Gordon S. Forbes, dated 4th January 1870.
From Chief Secretary to Government, Madras, No. 270, dated 17th December 1868, and enclosure.
From Joint Secretary to Government, North-Western Provinces, Public Works Department, No. 17C, dated 6th January 1870.
From Chief Secretary to Government, Fort Saint George, No. 1,993, dated 16th December 1869, and enclosures.
From Secretary to Chief Commissioner, Oudh, No. 3,133, dated 8th January 1870.
From Joint Secretary to Government of Bengal, Public Works Department, No. 21, dated 5th January 1870.
Telegram from Acting Chief Secretary to Government, Bombay, No. 142, dated 8th January 1870.
From Acting Chief Secretary to Government, Bombay, No. 147, dated 8th January 1870, and enclosure.
From Under-Secretary to Government of Bombay, Irrigation Branch, No. $\frac{16A}{49M}$, dated 10th January 1870.
Petition from Advocates, High Court, Bombay, no date.

of judgment, when the application is not made within ninety days from the date of the decree.

In modification of the present law, we have declared (Section 11) that the Court's decision on questions of valuing a suit shall be conclusive as between the parties. But we have at the same time protected the revenue by authorizing the Appellate Court, in cases where it considers that such questions have been wrongly decided, to require the appellant to pay such additional fee as would have been payable had the question been rightly decided.

In lieu of the fixed fees on the service of processes contemplated by the Bill as introduced, we have empowered (Section 19) the High Courts to make rules as to the costs of such service. We have also provided (Sections 21 and 22) for fixing the number of peons to be employed in the Mofussil Civil, Criminal, and Revenue Courts; and we propose to repeal expressly the existing law on the subject. The practice varies so greatly in different parts of the country that further consideration seems required before introducing a system of uniform charges for the service of process. The provisions on the subject which we have made are modelled on those now in force throughout the Bengal Presidency.

We have retained the fee of eight annas with which the Bill, as introduced, charges certain complaints to Criminal Courts. But we propose (Section 30) to direct the Court, on convicting the accused, to order him to re-pay to the complainant not only the fee in question but also the fees (if any) to be paid by the latter for serving processes in the case.

In deference to the representations that have been made as to the maximum fee chargeable on plaints and memoranda of appeal, we have reduced it from Rupees 5,000 to Rupees 3,000.

To discourage frivolous applications for reviews of judgment, we have imposed (Schedule I., No. 3) on such applications a fee of one-eighth of the fee paid on the institution of the suit or presentation of the appeal. In proper cases, the Courts will be empowered to refund so much of the fee so charged as exceeds the fixed fee now payable.

The distinction between the *ad valorem* duties chargeable under the English Stamp Acts and under the Bill, as introduced, on probates and on letters of administration, does not appear to us to rest on any reasonable ground. We have, therefore, (Schedule I, No 9,) substituted a common *ad valorem* fee of two per cent. on the amount of the property in respect of which probate of administration is granted.

In order to bring within the compass of a single enactment the whole law relating to Court fees, we have repealed and re-enacted all the provisions on this subject contained in the Code of Civil Procedure, Act X of 1859, the Oudh Rent Act, the Punjab Tenancy Act, the Bengal Act VIII of 1869, and certain Regulations of the Madras Code, and we have expressly repealed the provisions so re-enacted.

The Bill as introduced purported to repeal the whole of Act XXVI of 1867. We have saved so much of it as exempts Advocates of a High Court from filing Wakálatnámas. The matter appears one to be dealt with in a measure relating to procedure rather than in a Bill relating to Court fees.

The above are the chief amendments which we have made. We shall now specify our minor alterations.

We have authorized (Section 5) the Chief Justice of a High Court to delegate his power of deciding questions as to the amount of a fee.

In Section 7, Clause 5, we have placed suits for the definite share of an estate on the same footing as suits for land forming an entire estate, and provided that inam lands shall be valued in the same way as lands paying no revenue. We have also inserted a definition of the word "estate" as used in this clause.

We think it inexpedient that enquiries into nett profits or market value should, as a matter of course, take place for the purposes of the proposed Act. We have, therefore, (Section 8,) left the making of such enquiries wholly within the discretion of the Court.

Where it appears that the value has been wrongly estimated, we propose (Section 9) that the Court shall dismiss the suit, unless the additional fee be paid within a time to be fixed by the Court. Where the amount of mesne profits is left to be ascertained in executing the decree, if the profits so ascertained exceed the profits claimed, we have provided (Section 10) that further execution shall be strayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained shall be paid, and that, if such additional fee

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is not paid within the time fixed by the Court, the suit will be dismissed.

Where a suit is multifarious, we have provided (Section 16) for charging the aggregate amount of the fees to which plaints embracing each of the separate subjects would be liable.

We have inserted in the exemption clause (Section 18) probates and letters of administration when the amount of the property does not exceed Rupees 1,000, complaints by public servants, and applications relating to supply for irrigation of water belonging to Government, for leave to extend cultivation or to relinquish land, and for compensation.

We have provided (Section 32) for the admission in criminal cases of instruments for which the proper fee has not been paid.

We have exempted (Section 35) from the operation of the proposed Act the commission payable to the Accountant-General of the High Court at Fort William.

In Schedule I we have made provision for certificates under Act No. XX of 1864 and Bombay Regulation VIII of 1827.

In Schedule II we have subjected to a fixed fee suits for possession under Act XVI of 1838 and Bombay Act V of 1864. We have provided a fee of four rupees for caveats, and we have prescribed a fixed fee of ten rupees on applications and agreements under Sections 326 and 328 of the Code of Civil Procedure. We have reduced from thirty-two to five rupees the fee on petitions in suits under the Pársi Marriage Act.

We have inserted (as Section 17) Section 7 of Act XXVI of 1867, and have provided for summary suits for possession under the Limitation Act, and miscellaneous applications to a High Court.

We have fixed the 1st of March as the day on which the proposed Act shall come into force.

We have made some verbal alterations, and recommend that the Bill thus amended be passed. But we think it expedient that the Bill should first be re-published in the *Gazette* along with this report.

(Signed) F. R. Cockerall.
(„) J. Strachey.
(„) J. F. Stephen.
(„) Gordon S. Forbes.
(„) D. Cowie.
(„) F. S. Chapman.
(„) J. R. Bullen Smith.

11*th January* 1870.

Re-published by order of His Excellency the Governor in Council.

(Signed) J. I. MINCHIN,
Acting. Chief Secretary.

CIRCULAR ORDERS OF THE BOARD OF REVENUE.

No. III.

Standing No. 150-1.

Puttahs for dry land to contain clause of liability to be changed to wet.

Collectors when issuing puttahs for newly-granted dry lands should see that a clause is inserted in the puttah to the effect that the land is liable to be transferred to the head of "Wet" and assessed accordingly should the requisite means of irrigation be provided.

No. IV.

Standing No. 295-1.

Results of appeals where Government concerned to be on Stamp paper.

When reporting to the Board results of suits against, or appeals on behalf of, Government, (should such result be adverse to Government), Collectors will be careful *at the same time* to forward copies on stamped paper of the decrees and judgments in the Original and Appellate Courts, in order that no time may be lost should an appeal to a higher Court be decided on.

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